IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals
Sawyer, PJ, and Murphy and Hoekstra, JJ

IN THE MATTER OF PRESTON SANDERS and CAMERON SANDERS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

LANCE LAIRD,

Respondent-Appellant,

Lower Court No.: 11-2828-NA
Court of Appeals No.: 313385

Supreme Court No.: 146680

BRIEF OF *AMICI CURIAE* LEGAL SERVICES ASSOCIATION OF MICHIGAN, MICHIGAN STATE PLANNING BODY FOR THE DELIVERY OF LEGAL SERVICES TO THE POOR, AND MICHIGAN COALITION TO END DOMESTIC AND SEXUAL VIOLENCE IN SUPPORT OF APPELLANT-FATHER'S BRIEF

Beth J. Kerwin (P75201)
Attorneys for Legal Services Association of Michigan and Michigan State Planning Body for the Delivery of Legal Services to the Poor
HONIGMAN MILLER SCHWARTZ AND COHN LLP
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304
(248) 566-8460

Ann L. Routt (P38391)
Attorneys for Michigan Coalition to End Domestic and Sexual Violence
LEGAL SERVICES OF SOUTH CENTRAL MICHIGAN
420 N. Fourth Avenue
Ann Arbor, Michigan 48104

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QUESTION PRESENTED

Whether this Court should declare the so-called "one-parent doctrine" unconstitutional, which requires that trial courts interfere with constitutionally protected parental rights of non-adjudicated and presumptively fit parents (non-offending parents) based on the plea or adjudication of the other parent (offending parent), because the doctrine violates the procedural due process rights, substantive due process rights, and equal protection rights of the non-offending parent, here, the father, and because the doctrine adversely affects Michigan families, in particular low-income families, and undermines confidence in the judicial system?

The trial court said:	No, to the extent it answered this question.
The Court of Appeals said:	Did not answer.
Appellant says:	Yes.
Appellee says:	No.
Amici say:	Yes.

STATEMENT OF INTEREST OF *AMICI*

The *amicus curiae* listed below, believe that, in any child protective proceeding, the Constitution requires that the trial court hold an adjudication trial to determine the fitness of a parent before the State interferes with that parent's constitutionally protected parent-child relationship. *Stanley v Illinois,* 405 US 645, 92 S Ct 1208, 31 L Ed 2d 551 (1972). Because low income families and families where there is domestic violence are over-represented in the child protection system, this constitutional protection is vital to these families. Thus, the *amicus curiae,* all of whom have all already submitted detailed briefs on the unconstitutionality of this doctrine in this and other cases, ask the Court to rule that the "one-parent doctrine" is unconstitutional and violates the liberty interests of innocent parents -- here, Appellant Lance Laird.

The Legal Services Association of Michigan ("LSAM") is a Michigan non-profit organization incorporated in 1982. LSAM's members are the thirteen largest civil legal services organizations in Michigan and collectively provide legal services to low-income individuals and families in over 50,000 cases per year.[1] LSAM members have broad experience with all aspects of the child protection system and a deep institutional commitment to ensuring that low-income families—parents and children—are treated fairly in that system. Several LSAM members have contracts to directly represent parents and children in child protection cases. In addition, other LSAM members take such cases for free on a case-by-case basis. Almost all LSAM members work daily—e.g., in public benefits, family law, and housing cases—with families that are

[1] LSAM's members are: the Center for Civil Justice, Elder Law of Michigan, Lakeshore Legal Aid, Legal Aid and Defender, Legal Aid of Western Michigan, Legal Services of Eastern Michigan, Legal Services of Northern Michigan, Legal Services of South Central Michigan, Michigan Indian Legal Services, Michigan Migrant Legal Assistance Program, Michigan Legal Services, Neighborhood Legal Services, and the University of Michigan Clinical Law Program.

involved in and impacted by the child protection system. And all LSAM members are institutionally interested in and committed to providing fair and equal access to the courts system for low-income persons.

LSAM's interest in this case arises from its members' concerns about the delivery of legal services to low-income individuals and families. They are concerned that low-income persons will face the loss of their parental rights without full and fair proceedings. If left unchanged, the practice of denying a parent's right to adjudication in a parental termination proceeding based on a plea from the other parent will result in the unwarranted and unconstitutional intrusion by the State on familial rights.

The Michigan State Planning Body ("MSPB") is an unincorporated association of about forty individuals — from the legal services community, judiciary, private bar, and community organizations providing services to low-income persons — that acts as a forum for planning and coordination of the State's efforts to deliver civil and criminal legal services to the poor. The MSPB was initially created through a mandate of the federal Legal Services Corporation ("LSC"). Although LSC no longer requires that states have a formally designated State Planning Body, the MSPB has continued to function at the request of the programs and their state funder.

The MSPB urges Michigan policy makers, including this Court, to recognize the impact of key legal proceedings on low-income families and to assure that parents will not face the loss of their parental rights without full and fair proceedings. The MSPB has become aware of and is concerned about the disproportionate impact of terminations of parental rights in Michigan on low income families. It is critical that the Court provide trial courts and the Court of Appeals clear guidance in this area.

The Michigan Coalition to End Domestic and Sexual Violence is a non-profit membership organization, comprised of over seventy non-profit organizations dedicated to the empowerment of survivors of domestic and sexual violence. The mission of MCEDSV is the elimination of all domestic and sexual violence in Michigan.

MCEDSV is concerned that the "one-parent doctrine," as articulated by lower courts, permits unconstitutional interference with the decisions of fit parents. This practice is of particular concern to MCEDSV because it allows courts to hold a fit parent victim responsible for the conduct of an abuser, thus interfering with a victim's right and ability to protect her/his self and children.

Amici, whose members are involved in child welfare proceedings across the state on a daily basis, are concerned with developments in recent cases that negatively impact the rights of fit parents to make decisions regarding the upbringing of their children. *In re CR*, 250 Mich App 185; 646 NW2d 506 (2001) and similar recent Court of Appeals cases are unfortunate reflections on practices around the State, where caseload pressures and budget concerns often lead DHS and trial courts to take actions against presumptively fit parents, including placing children in foster care as opposed to with a presumptively fit parent, imposing service plans, and seeking to terminate parental rights, without compliance with the basic procedural safeguards put in place to assure fair and accurate decisions in these cases. It would be of tremendous benefit to the families across the State and to lower courts if this Court clearly stated the importance of these rights and reminded lower courts of their duty to observe and enforce these rights.

BRIEF IN SUPPORT OF APPELLANT-FATHER'S BRIEF

I. INTRODUCTION

Amici seek to end the practice where courts interfere with a parent's substantive rights without affording that parent the constitutionally-based protections guaranteed under the Juvenile Code and applicable court rules.

> *"THE COURT: If the Court accepts your plea of no contest there won't be a trial of any kind, and therefore you will be given [sic] up your rights that you would have in a trial and those include the following: the right to a trial by a Judge or a trial by a jury, the right to have the petitioner prove the allegations in the petition by a preponderance of evidence, the right to have the witness against you appear and testify under oath at the trial, the right to question the witnesses against you and to have the Court subpoena any witnesses you would believe could give testimony in your favor."*

Feb. 7, 2012 Adjudication Hearing Tr., Appellant Appendix at 21a. These rights are the procedural due process rights that Ms. Sanders (the "Mother") waived by accepting a no contest plea to child neglect at her adjudication hearing.

These same procedural rights were denied to Mr. Lance Laird ("Mr. Laird"), the father, without any pending allegations against him[2], without any adjudication hearing, and without any plea or other action waiving those rights by Mr. Laird.

Rather, the so called "one-parent doctrine"[3] allowed the trial court to bypass such procedural safeguards as to Mr. Laird and interfere with Mr. Laird's parental rights solely on the

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[2]The allegations against Mr. Laird were dismissed on April 18, 2012. See Father's Brief at 7.

basis of the Mother's plea, despite the fact that Mr. Laird was a presumptively fit parent (he was never adjudicated unfit) under *Stanley v Illinois,* 405 US 645 (1972). Tellingly, the trial court, itself, was shocked at such an assertion of jurisdiction, "[T]he adjudication that was based on mom['s] no contest plea does not adjudicate at all with respect to dad, I mean how can it? How can her admission constitute adjudication as to any affirmative allegation against him?" Appellant Appendix at 51a.

The State then substantially infringed on Mr. Laird's constitutionally-protected substantive due process right to parent his children without any finding of unfitness as to Mr. Laird. The State took his children from his care and custody, allowed only supervised parenting time with his children, and imposed on Mr. Laird a burdensome and expensive service plan. The State then filed a petition to terminate Mr. Laird's parental rights based, in part, on his inability to complete the unjustified and untailored service plan as a result of his poverty.

This doctrine is not unique to Mr. Laird's case – it is widely used by Michigan trial courts to the detriment of Michigan families. It disparately impacts indigent parents who, for example, may have more difficulty in achieving compliance with a service plan because of nothing other than lower income. In this regard, it leads to an increased risk of erroneous termination of parental rights as the trial courts and case workers confuse poverty with neglect. In addition, this doctrine is a mechanism of expediency employed as a result of caseload pressures and budget concerns, at the expense of innocent parent's rights and domestic violence victim's rights, which undermines confidence in the judicial system.

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[3]The "one-parent doctrine" allows trial courts to exercise jurisdiction over a parent, without any allegations or findings of unfitness against that parent (the "non-offending parent") and to interfere with the non-offending parent's involvement in his children's lives solely on the basis of findings of unfitness against the *other, offending*-parent. See *In re CR,* 250 Mich App 185, 205; 646 NW 2d 506 (2001).

Legal Services Association of Michigan ("LSAM"), Michigan State Planning Body ("MSPB") and Michigan Coalition to End Domestic and Sexual Violence ("MCEDSV"), therefore, join together as *amici curiae* to urge the Court to declare the so-called "one-parent doctrine" unconstitutional in order to end such trespasses on constitutionally-protected parental rights.

II. BACKGROUND

Amici adopt the Statements of Jurisdiction and Statement of Material Proceedings and Facts found in Appellant-Father's Brief ("Father's Brief") at pages 3, 4-9.

Amici add that on June 25, 2013, Department of Human Services ("DHS") brought a petition to terminate Mr. Laird's parental rights after Mr. Laird's Motion for Immediate Placement was denied. The petition was based, in part, on his inability to complete the service plan that was unjustifiably imposed on him, his unemployment, and his lack of independent housing. The petition was recently dismissed against Mr. Laird.

III. ARGUMENT

A. The One-Parent Doctrine is Unconstitutional[4]

The right of parents to direct the care, custody, and control of their children is a well-established liberty interest protected by substantive due process under the Due Process Clause of the Fourteenth Amendment. See *Troxel v Granville,* 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000); *Stanley, supra* at 651; *In re JK,* 468 Mich 202, 211; 661 NW2d 216 (2003); *Hunter v Hunter,* 484 Mich 247, 258; 771 NW2d 694 (2009).

Absent a finding of parental unfitness, the State has no right to interfere with the fundamental right of parents to make decisions about the custody, care, and control of their

[4] *Amici* reassert that the "one-parent doctrine" is unconstitutional for all of the reasons stated in the Father's Brief.

children. See *In re Clausen,* 442 Mich 648, 687; 502 NW2d 649 (1993) (emphasis added) ("the mutual rights of the parent and child *come into conflict only when there is a showing of parental unfitness.*"). A "state-required breakup of a natural family" cannot be founded "solely on a 'best interest' analysis that is not supported by the requisite proof of parental unfitness." *In re JK, supra* at 210.

Further, the State cannot constitutionally interfere with parents' fundamental right to direct the care, custody, and control of his children based on a mere *presumption* that the parent is unfit. See *Stanley, supra* at 657-658 ("[The state] insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient . . . ."). Rather, there is a presumption of parental fitness. *Id.;* see *Troxel, supra,* at 69.

The Court of Appeals, in *In re CR*, however, articulated the "one-parent doctrine," which purportedly gives trial courts' jurisdiction over both parents, including the presumptively fit parent, where only *one* parent has been adjudicated to have committed child abuse and/or neglect (or plead to such allegations). *In re CR, supra.* Lower courts have pervasively relied on this doctrine to interfere with the rights of a presumptively fit parent. In an unpublished decision, *In re Mays II,* the Court of Appeals wrongly determined that this doctrine was constitutional, relying on an unsupported reading of the statutes and court rules relating to dispositional hearings (post-adjudication) that an unfitness finding is inherently made at this later stage of the proceedings. *In re Mays II,* No. 309577, 2010 Mich App LEXIS 2461 (Mich App Dec 6, 2012), Ex A.

The statutes and court rules cited in *In re Mays II,* at most, ask a trial court to determine the "likely harm to the child if the child were to be separated from his or her parent[,]" but do not

require a fitness determination of that parent. See MCL 712A.18f(1)(c); MCL 712A.19(6); MCR 3.975(F)(1)(F); MCR 3.973(F)(3). Even if an unfitness finding, as required by the Constitution, is inherent in the trial court's later determination – which it is ***not*** – the non-adjudication hearings do not provide for the same procedural safeguards, such as trial by jury, or the application of a preponderance of the evidence standard to the unfitness allegations. Such lacking due process is not fundamentally fair to the innocent parent. See Father's Brief at 20-21.

By applying the *In re CR* doctrine and consciously avoiding an adjudication hearing to determine parental fitness of the non-offending parent, Michigan trial courts have infringed on presumptively fit parents' constitutional right to direct the care, custody, and control of their children by stripping parents of custody, restricting parenting time, imposing service plans, and even *terminating* parental rights.[5] This doctrine must be eliminated in order to end the adverse consequences for Michigan families.

B. Public Policy Considerations Support the Finding that Each Parent Is Entitled to a Determination of Fitness that Is Not Subject to Waiver by Another Parent Before the Trial Court Interferes With Any Parent's Parental Rights

The "one-parent doctrine" has two substantial adverse consequences that particularly concern these *amici*: (1) the doctrine disproportionately impacts low-income parents and permits trial courts to unjustifiably impose heavy burdens on innocent, low-income parents, further undercutting their parental rights, by (a) placing children in foster care as opposed to with presumptively fit parents, (b) ordering untailored, time-consuming, and expensive service plans and, (c) increasing litigation costs for presumptively fit parents; and, (2) the doctrine allows DHS

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[5] In addition, the doctrine violates a parent's equal protection right because the doctrine arbitrarily applies to two parent-respondent situations, but not to single parent-respondent situations. Thus, single parent-respondents are guaranteed an adjudication hearing and, therefore, more procedural due process protection, where conversely two-parent respondents are denied a guaranteed adjudication hearing. See Father's Brief at 26-29.

and parents to manipulate innocent parents, including in the domestic violence context, to the detriment of Michigan families in the name of expediency in order to avoid the prosecution of weak allegations against a parent.

1. The "One-Parent Doctrine" Disproportionately Impacts Low-Income Families and Unjustifiably Imposes Heavy Burdens on Low-Income Families

The "one-parent doctrine" disparately impacts low-income parents. To begin, children from low-income households are already more likely than children from middle and high-income households to be reported to child protective service agencies. *See, generally,* Douglas J. Besharov, *Child Abuse Realities: Over-reporting and Poverty,* 8 Va J Soc Pol'y & L 165, 183-84 (2000) (suggesting that the child welfare system is inappropriately involved in the surveillance of families who receive public assistance). In 2006, more than one- third of Michigan's children lived in low-income families.[6] Between 2000 and 2006, child poverty rose significantly from fourteen to roughly seventeen percent of children.[7]

The doctrine disproportionately impacts low-income parents because trial courts and caseworkers often confuse poverty with neglect. See e.g., *In re Mays,* Nos. 297446, 297447, 2010 Mich App LEXIS 2273, *15-16 (Mich App Nov 23, 2010), Ex B, *rev'd* 490 Mich 993 (2012) (termination of parental rights justified by the trial court, in part, because of inadequate

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[6] In fact, out of the approximately 2.5 million children living in Michigan, 1,004,668 (44%) of children live in low-income families and 512,667 (22%) of children live in poor families. *See* National Center for Children in Poverty, "Michigan Demographics of Low-Income Children" <http://www.nccp.org/profiles/state_profile.php?state=MI&id=6> (accessed July 24, 2013); *see also,* National Center for Children in Poverty, "Michigan Demographics of Poor Children" <http://www.nccp.org/profiles/state_profile.php?state=MI&id=7> (accessed July 24, 2013).

[7] Detroit with roughly thirty-nine percent of children in poverty was second only to Atlanta. Kinsey Alden Dinan, Sarah Fass, Michelle Chau, and Ayana Douglas-Hall, *Struggling Despite Hard Work: Michigan and Detroit,* November 2006. While the referenced statistics are alarming, it should be noted that this data predates the collapse of the auto industry, the spread of the foreclosure crisis, and record-setting unemployment rates, each of which has taken a toll on Michigan families.

housing where non-respondent father lived with his half-sister and, in part, because of the father's inability to complete a service plan as a result of poverty, for instance, where he missed individual counseling sessions because of a lack of transportation). With the rise in divorce, single parenting, and homelessness, there is an increase in situations in which what the state recognizes as "neglect" occurs on the basis of, in a large part, poverty. Paul Wilhelm, *Permanency at what cost? Five years of imprudence under the adoption and safe families act of 1997*, 16 Notre Dame JL Ethics & Pub Pol'y 617, 631 (2002). In fact, Michigan courts have cautioned against improperly emphasizing a parent's earning capacity. *See Mazurkiewicz v. Mazurkiewicz*, 164 Mich App 492, 500; 417 NW2d 542 (1987). Focusing on economic status disproportionally impacts the poor.

The "one-parent doctrine" likely creates a higher risk of termination of parental rights for low-income parents. As a result of the unwarranted jurisdiction over innocent, low-income parents, parents must attend numerous court hearings, assessments, classes, and counseling sessions, resulting in huge impositions on parents' time and financial resources. Thus, State interference in the parent-child relationship and the incumbent proceedings create a substantial risk of harm to parents' financial and familial stability. The practice of Michigan courts to require a non-offending parent to comply with a service plan and then terminate his rights based on non-compliance with that plan (without first finding him unfit) creates too high of a risk that the parental rights of the non-offending parent are being terminated on the basis of poverty because of an inability to complete the plan. Candra Bullock, *Low-income parents victimized by child protective services*, 11 Am UJ Gender Soc Pol'y & L 1023, 1026 (2003). DHS and trial courts, who are guided by such amorphous concepts as "substantial progress" toward a case plan and "reasonable expectation" that the parent will provide "proper care and custody," do not

appear to appreciate the fragility of an indigent parent's position in termination proceedings. Wilhelm, *supra* at 638. In sum, poverty is far too often resulting in the termination of parental rights. See Deborah Paruch, *The Orphaning of Underprivileged Children: America's Failed Child Welfare Law and Policy,* 8 JL & Fam Stud 119, 140 (2006).

a. Unjustifiable Custody Placements of Children In Foster Care As Opposed to With Presumptively Fit Parents Adversely Affect Low Income Families

Trial courts routinely place children in foster care or relative placement rather than with the presumptively fit parent when exercising jurisdiction based on the "one-parent doctrine," as seen in this case. See *In re Mays, supra* at *5-7 *rev'd* 490 Mich 993 (2012) (children were not placed with presumptively fit parent); *Ratte v Corrigan ("Mike's Hard Lemonade Case"), Complaint, No. 2:11-cv-11190-AC-MJH* (same), Ex C. This is especially true where the presumptively fit parent has low-income, is unemployed, or does not have independent housing. See e.g., *In re Mays, supra at* *7 *rev'd* 490 Mich 993 (2012) (children were not placed with the presumptively fit father because he did not have independent housing and lived with his half-sister in a home that allegedly needed some work).

Here, without any adjudication of Mr. Laird as an unfit parent, the trial court, in November 2011, removed Mr. Laird's two children from his custody and care at his mother's house (where Mr. Laird and his children were living) and placed them with "the Department of Human Services for care and supervision" and into foster care. See Father's Brief at 4; Nov 16, 2011 Order, Appellant Appendix at 8a. Mr. Laird was given unsupervised parenting time *at the discretion of the Department of Human Services. Id.* Mr. Laird went from seeing his children every day to seeing his children two hours a week, due to the distance of the foster care placement and the unavailability of the visitation coach who DHS required to attend visits. See

Feb 7, 2012 Tr. at 37-39, 61, Appellee Appendix at 23b. The caseworker admitted that Mr. Laird did not have the same logistical problem with a placement with the grandmother. Feb 7, 2012 Tr. at 50, Appellee Appendix at 29b.

Thereafter, Mr. Laird filed a motion to place his children with his mother so he could have more parenting time with his children. See Father's Brief at 6; Feb 7, 2012 Tr. at 65, Appellant Appendix at 28a; *In re Mitchell,* No. 286895, 2009 WL 763930 (Mich App Mar 24, 2009), Ex D, J. Stephens, dissenting, whose reasoning was adopted by this Court in reversing the Court of Appeals' decision, 485 Mich 922 (2009) (living and relying on the support of family, is "increasingly relevant during this time of economic turmoil" and is not in and of itself an indication that the individual is an unfit parent).

The prosecutor listed the following factors in favor of foster care placement with the aunt relating to poverty: the children are in a "home where they can be twenty four seven [because of in-home daycare];" and "[the foster care home] is already appropriate for their placement, nothing needs to be changed, doctored, altered, screens put up, doors added on, family rooms made into bedrooms, that kind of thing." Feb 7, 2012 Tr. at 71-72, Appellee Appendix at 37b. As Mr. Laird's counsel put it, "we have an infant and a toddler who are being deprived with a relationship with their parents by DHS because they don't have the resources." *Id.* at 74, Ex E.

The trial court decided to continue the foster care placement with the children's aunt in Addison, Michigan, even though it recognized that it would strain parenting time for Mr. Laird who lived in Jackson, Michigan and even though Mr. Laird opposed this placement. Feb 22, 2012 Tr. at 20-21, Appellant Appendix at 36a; Feb 7, 2012 Tr. at 29, Appellee Appendix at 20b. The judge noted that comparing the two homes (of the aunt and the grandmother), the aunt's environment is somewhat better. *Id.* Overall, the judge found that there was not a "sufficient

showing to justify changing the placement" of Mr. Laird's children and upsetting his children. Feb 22, 2012 Tr. at 20, Appellant Appendix at 36a. The judge also restricted Mr. Laird's parenting time to supervised parenting time. See Feb 2, 2012 Order, Appellant Appendix at 39a.[8]

As evidenced by Mr. Laird's case, poverty only exacerbates the effects of non-placement with the presumptively fit, low-income parent on the parent's right to direct the care, custody, and control of his child. It is even more difficult for a parent with low income to exert his parental rights because he may not have employment flexibility or transportation to see his children who are unjustifiably separated from him. For instance, in *In re Mays,* the non-respondent father had difficulty visiting his children in foster care at the maternal grandmother's home "because of work and the bus schedule." *In re Mays, supra* at *7 *rev'd* 490 Mich 993 (2012).

A trial court's ability to place a child in foster care rather than with a presumptively fit parent, will almost certainly affect the child's wellbeing as well. See *Mazurkiewicz v Mazurkiewicz,* 164 Mich App 492, 500; 417 NW2d 542 (1987) (undue emphasis on economics in determining custody could have a prejudicial effect on the child's best interests). One study indicated that children who stay with their families, rather than being placed in foster care, are less likely to become juvenile delinquents, teen mothers, and are more likely to hold a job as young adults. Joseph J Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effect of Foster Care,* Am Econ Review (Dec 2007). Moreover, a study from the Child Welfare

[8]In August 2012, Mr. Laird filed a motion arguing that his children be returned to his care immediately because the trial court had violated his substantive due process right to direct the care of his children by placing his children in foster care without adjudicating him an unfit parent. Father's Brief at 8-9. The trial court, citing *In re CR, supra,* upheld the constitutionality of the "one-parent doctrine," which gave the trial court jurisdiction to interfere with Mr. Laird's parental rights on the basis of the jurisdictional findings against the children's mother. *Id.*

Information Gateway stated that from 2001 to 2011, the number of children who were placed into the foster care system and subsequently reunited with their parents decreased, while the number of children in the foster care system who were adopted, emancipated, or provided guardians increased. Child Welfare Information Gateway, *Foster Care Statistics 2011,* p. 6 <www.childwelfare.gov> (accessed July 24, 2013). Thus, the likelihood that children in the foster care system are reunited with their parents is steadily decreasing. It is not in a child's best interest to disrupt unnecessarily the strong parent-child emotional bond by restricting or terminating parental rights of low-income, non-offending parents. Candra Bullock, *supra* at 1026.

Placing a child in foster care rather than with a presumptively fit parent (i.e. before any adjudication hearing finding that the parent did anything wrong) also undermines confidence in the judicial system because an innocent parent is given no specific justification by the court for this large imposition on his constitutionally protected due process right. Why shouldn't a parent have custody of his children if the State has not taken any action to prove him unfit? Michigan statutes support that placement in foster care (as opposed to with a parent) should only be available as a last resort. MCL 712A.13a(9).[9]

Denying a presumptively fit parent custody of his or her child constitutes a substantial infringement on the parent's right to direct the care, custody, and control of his or her child.

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[9] Note that this statute became effective after the placement determination in this case, on June 12, 2012. It states, "The court may order placement of the child in foster care if the court finds ***all*** of the following conditions: (a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being. (b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from risk as described in subdivision (a). (c) Continuing the child's residence in the home is contrary to the child's welfare. (d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child. (e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare." MCL 712A.13a(9) (emphasis added).

Absence a finding of unfitness, as required by *Stanley, supra,* a trial court should therefore be required to place a child with his or her presumptively fit parent. In other words, trial courts should be required to make a determination of parental fitness ***before*** infringing on an innocent parent's parental rights by placing a child in foster care rather than with a presumptively fit parent. This holds particularly true because non-placement with the presumptively fit parent has disproportionate effects on low-income parents and potentially adverse effects on children.

b. Unjustifiable and Untailored Service Plans Imposed on Presumptively Fit Parents Adversely Impact Low-Income Families

As seen in this case, trial courts regularly impose service plans on non-offending parents. Yet there is no evidence that imposing service plans on low-income parents, or *any* parent, fixes any "problems" for parents and families. For a working, low-income parent to complete a service plan, it can be exceedingly difficult, making such parents more susceptible to having their parental rights disposed of where there is no evidence of how such a plan helps the family in the first instance.

In this case, Mr. Laird never received an adjudication trial to determine his fitness as a parent. Father's Brief, at 4. In November of 2011, DHS filed an amended petition with allegations against the children's mother and Mr. Laird. *Id.* Mr. Laird contested the allegations and requested an adjudication trial. *Id.* In February 2012, the children's mother entered into a plea as to the allegations in the DHS petition against her, giving the trial court jurisdiction over her. *Id.* Mr. Laird did not enter into a plea. *Id.* In April of 2012, DHS then *dismissed* the allegations in the petition against Mr. Laird, which had never been examined by the trial court or proven against Mr. Laird by the State. *Id.* DHS asserted that the trial court had jurisdiction over Mr. Laird as a result of the one-parent doctrine and the court specifically referred to Mr. Laird as

a non-respondent parent. See May 2, 2012 Tr at 11, Appellant Appendix at 50a; Sept 5, 2012 Tr at 18, Appellee Appendix at 66b.

In May 2012, however, the trial court ordered Mr. Laird to complete a costly and time-intensive service plan, directly and substantially interfering with his parental rights. *Id.* The plan required him to complete a psychological evaluation, a parenting class, a substance abuse assessment, random drug screens, obtain housing and employment, and follow the terms of his probation. *Id.* Specifically, the plan required Ms. Laird to do the following:

1. "successfully complete a psychological evaluation (which should be scheduled expeditiously) and follow all recommendations of that evaluation,"

2. "parenting classes and demonstrate benefit/recommendations of those classes,"

3. "a substance abuse assessment including participating in the dual recovery program,"

4. "submit to random drug screens and demonstrate sobriety,"

5. "obtain and maintain housing and employment,"

6. "follow the terms of his probation,"

7. "submit documentation to the case worker for all completed services . . .," and

8. "DHS has discretion to move to unsupervised visits of the father with Preston and Cameron following completion of his psychological assessment assuming he attends all parenting sessions."[10]

May 2, 2012 Order, Appellant Appendix 53a. This plan was imposed without any *allegations* before the trial court of abuse or neglect or unfitness as to Mr. Laird, let alone a

[10] Contrary to the prosecutor's assertions, Mr. Laird did contest the court's ability to impose a service plan on him. Aug. 22, 2012 Tr. at 20, Appellant Appendix at 59a. ("[DHS] requests[s] that [Mr. Laird] do services, he's been asking for services, but for it to be court ordered, the court doesn't have jurisdiction over Mr. Laird because he has not been adjudicated.").

determination of unfitness as to Mr. Laird. *Id.* The trial court based its jurisdiction on the plea entered by the children's mother – not on any conduct on the part of Mr. Laird. *Id.*

Without a finding of unfitness, service plans for presumptively fit parents are untailored and not individualized. Trial courts base their service plans on *unsubstantiated* allegations and information which may not be reliable. Therefore, the services cannot be tailored to the individual parent. Here, Mr. Laird's service plan was not directly related to potential barriers to Mr. Laird acting as a fit parent for his children. How could such a plan be tailored to Mr. Laird where (i) there were no pending allegations against him and (ii) there was no adjudication or plea relating to any such allegations? How could a court know if any services were necessary or helpful for Mr. Laird? Here, for instance, the court ordered Mr. Laird to obtain and maintain housing. However, Mr. Laird already had proper housing for his children at his mother's house – DHS had already permitted his children to reside with him there for approximately three months from September to November of 2011.[11]

Mr. Laird's service plan is not unique, which further demonstrates that such service plans are not properly individualized or tailored to innocent parents. In *In re Mays,* the following, very similar plan was ordered by the referee for respondent father who was never adjudicated:

> "(1) evaluations: clinic for child study (2) counseling/therapy: parenting classes (3) parenting time: weekly parenting time may be supervised by relative as Court ordered (4) other: attend to children's educational needs (5) maintain suitable housing (6) maintain a legal source of income (7) fully cooperate with the Family Independent Agency (8) attend all Court hearings (9) placement: placement/continuation of the children's residence in the parent[']s home is

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[11] There is no requirement for a parent to have independent housing to have custody of his children and any such requirement would disproportionately impact low-income parents. *In re Mitchell, supra.* The fair market rent for a two-bedroom apartment in Michigan is $768. National Low Income Housing Coalition, Out of Reach: Michigan 2013, <http://nlihc.org/oor/2013/MI> (accessed July 24, 2013). This is nearly twice the amount of the average cash subsidy of $393 per month for a low-income family of three that relies on cash assistance as a means of survival.

> contrary to the children's welfare. The children are to be placed with a suitable relative or in foster care under the supervision of the Family Independence Agency."

See Report and Recommendation of Referee, May 12, 2009 at Ex F. The parent-agency service plan for the non-respondent, presumptively fit mother in *In re Moore,* No. 298008, 2010 Mich App LEXIS 2535 (Mich App Dec 28, 2010), Ex H, also demonstrates that such plans are not individualized. See Ex G. The only identified "barriers" in the parent-agency plan for the mother were parenting skills and emotional stability, yet she was required to complete an intricate substance abuse treatment program, which was completely unrelated to the identified barriers. *Id.* In addition, substance treatment assessments, which are often required for parents with a minor or no history of using any drugs and/or alcohol, often result in other services being recommended, such as attending AA meetings, submitting to random drug tests, psychological counseling, and anger management, because the assessments err on the side of caution and they have a vested interest in keeping the programs full, likely finding "barriers" where none exist.

Not only are such service plans not individualized, but they are not legally justified because they are not imposed on the basis of the conduct of the innocent parent but, instead, imposed on the basis of the conduct of the *offending* parent. To legitimize the service plans and give participants an understanding of *why* such a plan is being imposed, the court must first adjudicate a parent to determine unfitness and to assess the resulting needs of a parent. Imposing services without any determination against a parent raises questions of court authority to impose such services (even judges question such authority, see *supra* at p.2) and undermines confidence in the judicial system.

The costs for presumptively fit parents, and in particular, low-income parents, to meet such unjustified service obligations imposed by trial courts can outweigh the benefit of such

plans.[12] By way of example, an order requiring a substance abuse assessment has many fees and costs associated with it and not all services are free to the parent. The innocent parent must have an initial evaluation, drug testing, and a care assessment. To illustrate the impact of the potential cost of just this one, common service imposed on presumptively fit, low-income parents, a three person family relying on cash assistance in Michigan in 2013, receives on average a $393 cash subsidy per month. An initial evaluation can cost between $100-350, depending on the provider. See Ex I. Ongoing drug tests can cost between $20-30/month, not accounting for the time spent by the parent and the cost of gas and/or transportation to get to the drug testing facility. See Ex J. Assuming a $20 drug test cost per test and that the parent is required to be tested twice a week (here, Mr. Laird was testing twice a week for a period of time), on average it can cost more than 40.7% of a family's monthly cash subsidy just to comply with this *one* service obligation, which was never justified by a finding of unfitness.

Here, Mr. Laird, through his counsel, specifically indicated that he had trouble complying with services that were unjustifiably imposed because of cost issues: "They wanted him to go to this dual recovery, and they were – and they are complaining in here that he's not doing it, *pay for it* and he'll go." May 2, 2012 Tr. at 15, Appellant Appendix at 52a (emphasis added). "He went and paid for [drug tests] when they would stop paying. He was paying for the [drug tests] because he wanted to prove to them, to you, to everybody that he's not the one with the problem." *Id.* at 16, at 52a. "[H]e has completed the batterer's intervention program, twenty six weeks and in fact he did almost fifty weeks, *but because he wasn't – he couldn't pay for the classes*, he would go and sit through the classes but he didn't get credit." *Id.* (emphasis added).

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[12] In addition, the untailored service plans create unnecessary expenses for the judicial system and public resources – not just for the presumptively fit parent – to the extent that the court or public organizations pay for any unnecessary or inappropriate services.

As seen in other Michigan cases, Mr. Laird's parental rights may be terminated based on his inability to complete the service plan regardless of the fact that he was never adjudicated an unfit parent. See e.g., *In re Mays,* 490 Mich 993, 995 (2012) (Marilyn Kelly J, concurrence) ("the state never determined that [the non-offending parent] was an unfit parent, identified anything he did wrong, or stated what failures on his part the treatment plan was intended to fix. Nevertheless, when [the non-offending parent] did not fully comply with the plan, the court terminated his parental rights"). Here, the court even warned Mr. Laird's counsel that it could impose services, such as AA, if he wanted the court to consider reuniting him with his children, implying that reunification was contingent on Mr. Laird completing services. Aug 22, 2012 Tr. at 21; Father's Brief at 8. As early as January 2013, DHS's agenda was termination of Mr. Laird's parental rights. Appellant Appendix at 71a-71b. DHS then filed a petition to terminate Mr. Laird's parental rights in June of 2013, which was dismissed.

Absent a determination of parental unfitness, there is no justification for a court's drastic imposition on a parent of a laundry list of services. This only adds to the stress on low-income families. *Amici* are not asserting that non-offending parents are perfect or that services should *never* be ordered. Rather, *amici* strongly believe, based on *Stanley, supra,* that only *after* a determination of parental unfitness, services may be ordered to help rehabilitate an unfit parent without infringing on the parent's constitutional rights, adversely and unjustifiably impacting low income parents, or undermining the judicial system.

c. Increased Litigation as a Result of Court Action Toward Presumptively Fit Parents Adversely Impacts Low-Income Families

Low-income families are also disproportionately disadvantaged when litigating against parties who have more money and resources to sustain long and expensive court actions. A financially strapped party is overwhelmed by the prospect of a lawsuit and not all appointed

counsel is free. If forced to litigate to preserve parental autonomy, families will be divided into two classes, those who can afford to defend their parenting decisions, and those who will not be able to afford to do so. In fact, Justice Kennedy articulated the potential for creating financial chaos in a family in his dissenting opinion in *Troxel, supra*:

> [A] domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated. ... If a single parent who is struggling to raise a child is faced with visitation demands from a third party, the attorney's fees alone might destroy her hopes and plans for the child's future. Our system must confront more often the reality that litigation can itself be so disruptive that constitutional protection may be required; and I do not discount the possibility that in some instances the best interests of the child standard may provide insufficient protection of the parent-child relationship.

It is not just the potential attorneys' fees incurred while litigating against a placement in foster care as opposed to with a presumptively fit parent, litigating against a service plan unjustifiably imposed, or litigating against a termination petition – it is the time it takes to attend the hearings and the gas and/or transportation costs to get there. In this case, for example, there were over nine hearings and Mr. Laird attended many if not all of such hearings before he was incarcerated. See Appellant Appendix at 7a, 12a; see also Ex K. This constitutes a substantial imposition on a low-income parent.

In sum, the "one-parent doctrine" disproportionately impacts low-income parents in Michigan and should be eliminated.

3. The One-Parent Doctrine Allows DHS to Manipulate Parents In Order to Terminate Parental Rights and Separate Parents from Their Children

The "one-parent doctrine" allows DHS and offending parents to manipulate innocent, non-offending parents, including in the domestic violence context, to the detriment of Michigan families in the name of expediency. *Amici,* as advocates for Michigan parents and families state-

wide, have encountered the following typical fact patterns which illustrate DHS's improper use of this doctrine.

a. Doctrine Used Against Innocent Custodial Parent

DHS uses the "one-parent doctrine" to interfere with the parental rights of non-offending custodial parents. This strategy appears to be used by DHS to avoid trial on weaker petitions relating to the custodial parent and/or to avoid the expense and time of an adjudication hearing as to the custodial parent. For example, DHS has a dispute with a custodial parent and files a petition against that parent. The custodial parent vigorously defends the petition. Before trial, DHS locates an (often absent) non-custodial parent, brings a new petition against the non-custodial parent, and that parent pleas to the allegations in the new petition (e.g., abandonment or non-payment of child support). This gives DHS jurisdiction based on the "one-parent doctrine" over the presumptively fit, custodial parent without having to go to trial with the custodial parent. See e.g., *In re Bratcher,* No. 295727, 2010 WL 2977535 (Mich App July 29 2010), Ex L, (where a non-custodial father, who was admittedly "not involved in" his children's lives, phoned in a no contest plea at a pretrial hearing based in large part on his lack of involvement and failure to pay child support and, based on the plea, the trial court took jurisdiction over the mother without proving the allegations against her and deprived her of custody of her son).

In the domestic violence context, DHS may seek to align with the abuser to obtain jurisdiction based on the "one-parent doctrine" over a domestic violence victim, giving the abuser more control over the victim. In this scenario, DHS has a dispute with a custodial parent/victim. DHS contacts the non-custodial parent/abuser, brings a petition against the abuser, and the abuser pleas to the allegations. The result of the plea is that DHS aligns with an abuser to obtain jurisdiction over the custodial parent/victim. This gives the abuser continued

power and control over the custodial parent/victim by creating new leverage for the abuser who now has the power to give a court jurisdiction over the non-offending, custodial parent/victim with his plea and to interfere with that parent/victim's ongoing relationship with his or her children (even risking termination of that relationship).

In the divorce context, DHS may seek to align with the non-custodial parent to obtain jurisdiction over the custodial parent, giving the non-custodial parent a potential advantage in a divorce or custody case or providing a mechanism for the non-custodial parent to get back at the custodial parent. For instance, DHS has a dispute with a custodial parent. DHS contacts the non-custodial parent, brings a petition against the non-custodial parent, and that parent pleas. In *amici's* collective experience, ex-spouses frequently attempt to use allegations of neglect or abuse as means to circumvent adverse custody determinations or as a way to exercise continued power and control over a former spouse. If raised in the context of an abuse or neglect case, the non-custodial parent can invoke the jurisdiction of the probate court without any substantive analysis of the custodial parent/ex-spouse's parental fitness, and even result in a change of custody or a more favorable resolution of a divorce case for the non-custodial parent. This raises the specter of non-custodial parents raising allegations or entering pleas to allegations as a way of circumventing a family court's custody decision and to continue to exercise control over the other parent.

b. Doctrine Used Against Innocent *Non*-Custodial Parent

DHS uses the "one-parent doctrine" to interfere with the parental rights of non-offending, non-custodial parents without any determination of unfitness as to the non-custodial parent. Similar to Mr. Laird's case, an event occurs where DHS properly files a petition against the custodial parent. Thereafter, DHS contacts the non-custodial parent, but the non-custodial parent

is not involved in or responsible for the event. The non-custodial parent offers a placement for the child, either directly or with a relative. DHS denies placement with the presumptively fit parent and imposes a service plan, which includes drug testing, counseling, and employment requirements on the uninvolved parent. DHS then often seeks to terminate the non-offending, non-custodial parent's parental rights based on the parent's inability to comply with the service plan. See discussion of Mr. Laird's case, *supra*; see also *In re Mays, supra* (Marilyn Kelly J, concurrence) ("the state never determined that [the non-offending parent] was an unfit parent, identified anything he did wrong, or stated what failures on his part the treatment plan was intended to fix. Nevertheless, when [the non-offending parent] did not fully comply with the plan, the court terminated his parental rights").

One well-respected Michigan practitioner shared the following particularly egregious situation, in which the mother's plea was used as a jurisdictional placeholder to keep the children from the non-offending father, which is paraphrased below:

> The case began in 2001 and ended in 2013. If the court had not relied on the "one-parent doctrine" to take and keep the children from their non-offending and fit parent, their father, the case would have been resolved in 2009. To keep the case open after the father's successful parental rights termination appeal, the court legally resurrected the terminated mother, restored her parental rights, and used a two-year-old plea by her to keep the custody deprivation going against the father. She was a jurisdiction placeholder.
>
> The mother had the two children taken from her in 2006. From 2006-2009, the father was imprisoned for a home invasion. The children were returned to the mother later in 2006, and taken again from her in 2008, for serious child neglect to which she pled. At a hearing in 2009, the mother released her rights to her children and the court terminated the rights of the father based only on his incarceration--one week before his release. In 2010, he won his termination appeal based on a *Mason* violation. He completed extensive services in prison. When he was released on parole he became a model citizen--husband, step-father, business owner, and law-abiding parolee.
>
> After winning the appeal, the only legal parent was the father. He filed a motion for immediate return of the children to him and dismissal for lack of jurisdiction--citing the *Church* doctrine because the pleading parent was no longer a legal parent.

The LGAL and DHS allied to restore the mother's parental rights so that jurisdiction could be sustained based on her 2008 plea. The court granted the motion to reinstate her rights and pronounced that it had jurisdiction. DHS had filed a temporary custody petition against the father, which it dismissed after the mother's rights were restored.

The father appealed the reinstatement of the mother's rights and the adverse rulings on his remand motions. His court-appointed attorney dismissed the appeal without speaking to trial counsel.

The mother was absent for a year after she regained her rights. She did not complete any services or parenting time. She re-married and DHS became her ardent backer for custody. The children were turned against the father by the mother, DHS, and the relative foster parent. In 2013, the father lost the year-long permanency planning hearing. The court proclaimed both parents fit and returned them to the mother based on child preference.

A doctrine which permits such abuses on a presumptively fit parent must be eliminated.

c. Doctrine Used Against Parent In Two-Parent Custody Scenario

DHS uses the "one-parent doctrine" to interfere with the parental rights of the non-offending custodial parent in a two-parent custody situation. For instance, an event occurs where DHS filed a petition against one custodial parent, but then refuses to place the child with the uninvolved parent based on the "one-parent doctrine" and/or a suspicion that the involved parent will return to the home.

In one well-known incident, a University of Michigan professor accidentally gave a Mike's Hard Lemonade to his son at a baseball game without realizing that the lemonade contained alcohol. *Mike's Hard Lemonade Case, supra.* His son went to the hospital and no alcohol was detected in his blood. *Id.* Thereafter, Child Protective Services placed the son in foster care rather than with the uninvolved mother, who was not at the game. *Id.*

Overall, the "one-parent doctrine," which allows DHS and offending parents to intrude on the parental rights of innocent, non-offending parents to the detriment of Michigan families for purposes of expediency, at best, undermines confidence in the judicial system. In addition, it disproportionately affects low-income families, encourages untailored service plans that expend

court and parental resources without justification, allows for unjustified shortcuts to terminate parental rights, and fails to give innocent parents a basis for any such court action. The "one-parent doctrine" wreaks havoc on innocent parents and Michigan families.

IV. CONCLUSION

The widespread application of the "one-parent doctrine" has a real and detrimental impact on Michigan families, and in particular, low-income families. The doctrine allows courts to trample on the constitutionally-protected rights of parents, as illustrated by Mr. Laird's experience – the State took his children from his care and custody, allowed only supervised parenting time, imposed a burdensome and expensive service plan, and then sought to *terminate* his parental rights based, in part, on his inability to complete the service plan as a result of his poverty – all without any adjudication hearing to determine Mr. Laird's parental fitness, and solely on the basis of the Mother's plea.

Amici curiae, all of whom have already submitted detailed briefs on the unconstitutionality of this doctrine in this and other cases, ask the Court to rule the "one-parent doctrine" unconstitutional in order to protect the substantive due process rights of parents in Michigan and to end the needlessly harsh and destructive consequences that the "one-parent doctrine" has on low-income families. *Amici* ask the Court to find that, absent an adjudication finding of unfitness, a court cannot use its disposition authority to infringe on the rights of an innocent parent. By way of this ruling, *the Court would overrule* In re CR, supra, *as interpreted by the lower courts in this case and* In re Mays II, supra, *and hold that a non-offending parent is entitled to an adjudication hearing before a court may deny that parent contact with his or her child or otherwise interfere with that parent's parental rights.*

Therefore, for the foregoing reasons, *amici curiae* request that this Court grant their motion to submit this *amici curiae* brief in the above-referenced matter and grant Appellant-Father's Brief.

Respectfully Submitted,

Beth J. Kerwin (P75201)
Attorneys for Legal Services Association of Michigan and Michigan State Planning Body for the Delivery of Legal Services to the Poor
HONIGMAN MILLER SCHWARTZ AND COHN LLP
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304
(248) 566-8460

Ann L. Routt w/ permission Beth Kerwin
Ann L. Routt (P38391)
Attorneys for Michigan Coalition to End Domestic and Sexual Violence
LEGAL SERVICES OF SOUTH CENTRAL MICHIGAN
420 N. Fourth Avenue
Ann Arbor, Michigan 48104

Dated: August 6, 2013

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EXHIBIT A

1 of 1 DOCUMENT

In the Matter of MAYS, Minors.

No. 309577

COURT OF APPEALS OF MICHIGAN

2012 Mich. App. LEXIS 2461

December 6, 2012, Decided

SUBSEQUENT HISTORY: Leave to appeal denied by, Motion granted by *In re Mays, 2013 Mich. LEXIS 269 (Mich., Mar. 15, 2013)*

PRIOR HISTORY: [*1]

Wayne Circuit Court. Family Division. LC No. 09-485821-NA.

In re Mays, 2010 Mich. App. LEXIS 2273 (Mich. Ct. App., Nov. 23, 2010)

JUDGES: Before: MURRAY, P.J., and CAVANAGH and STEPHENS, JJ. MURRAY, P.J., (concurring).

OPINION

PER CURIAM.

In this child protective proceeding case, respondent W. Phillips appeals a circuit court order, following a permanency planning hearing, that continued the minor children's placement in foster care and denied respondent's motion for placement of the children with him and dismissal of the trial court's jurisdiction. The order was entered during proceedings on remand after our Supreme Court reversed an order terminating respondent's parental rights.[1] *In re Mays, 490 Mich 993; 807 NW2d 307 (2012)*. We affirm.

1 Although respondent initially filed a claim of appeal from the trial court's order, this Court, in response to a jurisdictional challenge in the children's brief on appeal, concluded that it lacked jurisdiction by right because the order was not a final order defined in *MCR 3.993(A)*, but "that the claim of appeal is treated as an application for leave to appeal and leave to appeal is GRANTED." *In re Mays*, unpublished order of the Court of Appeals, entered July 25, 2012 (Docket No. 309577).

The Department of Human Services (DHS) filed a [*2] petition for temporary custody of the children in March 2009. The petition alleged that the children were living with their mother, respondent U. Mays, who had left them home alone, and that respondent had stated that he was unable to care for the children at that time and that their best placement would be with their grandmother. The court acquired jurisdiction over the children in April 2009 when respondent Mays entered a plea of admission to the allegations in the petition. The trial court held a dispositional hearing in May 2009. It continued the children in alternative placement and directed the parents to participate in reunification services.

In December 2009, the DHS filed a supplemental petition to terminate each parent's parental rights.

Following a hearing, the trial court terminated the parents' parental rights. Although this Court affirmed that decision, *In re Mays*, unpublished opinion per curiam of the Court of Appeals, issued November 23, 2010 (Docket Nos. 297446, 297447), our Supreme Court subsequently reversed the order terminating respondent's parental rights, holding that "the trial court clearly erred in concluding that a statutory basis existed for termination of [*3] respondent's parental rights" and that the trial court erred in finding that termination was in the children's best interests when the factual record was inadequate to make a best interests determination. *In re Mays, 490 Mich at 993-994.*[2] Although the Supreme Court had previously directed the parties to address the constitutionality of the so-called "one parent" doctrine first adopted in *In re CR, 250 Mich App 185; 646 NW2d 506 (2002)*, the Court ultimately declined to consider that issue because respondent had not raised it in his appeal to this Court. *In re Mays, 490 Mich at 994.*

> 2 In a separate order, the Supreme Court also reversed the termination of respondent Mays' parental rights. *In re Mays, 490 Mich 997; 807 NW2d 304 (2012).*

Once the case returned to the trial court, respondent filed a motion for termination of the court's jurisdiction over the children or to return the children to his custody. He argued that the trial court had violated his due process rights when it utilized the one parent doctrine recognized in *In re CR* to [*4] take jurisdiction over the children because it deprived him of custody without a determination of unfitness. The trial court disagreed and denied the motion.

Respondent now argues on appeal that the trial court's continued exercise of jurisdiction over the children based solely on respondent Mays' plea, without an adjudication of unfitness with respect to him, violates his constitutional right to due process. After de novo review of this constitutional issue, we disagree. See *County Rd Ass'n of Mich v Governor, 474 Mich 11, 14; 705 NW2d 680 (2005).*

The concept of due process is flexible, and analysis of what process is due in a particular proceeding depends on the nature of the proceeding, the risks involved, and the private and governmental interests that might be affected. *In re Brock, 442 Mich 101, 111; 499 NW2d 752 (1993).* "The essence of due process is fundamental fairness." *In re Adams Estate, 257 Mich App 230, 233-234; 667 NW2d 904 (2003)* (internal quotation marks and citation omitted). Procedural due process requires that a party be provided notice of the nature of the proceedings and an opportunity to be heard by an impartial decision maker at a meaningful time and in a meaningful [*5] manner. *Reed v Reed, 265 Mich App 131, 159; 693 NW2d 825 (2005).* The opportunity to be heard requires a hearing at which a party may know and respond to the evidence. *Hanlon v Civil Serv Comm, 253 Mich App 710, 723; 660 NW2d 74 (2002).*

"[P]arents have a significant interest in the companionship, care, custody, and management of their children. This interest has been characterized as an element of 'liberty' to be protected by due process." *In re Brock, 442 Mich at 109.* A parent's interest in his children "warrants deference and, absent a powerful countervailing interest, protection." *Stanley v Illinois, 405 U.S. 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972).* Conversely, the state has a legitimate interest in protecting children who are neglected or abused by their parents. *Id. at 652*; *In re VanDalen, 293 Mich App 120, 132-133; 809 NW2d 412 (2011).* But "so long as a parent adequately cares for his . . . children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel v Granville, 530 U.S. 57, 68-69; 120 S Ct 2054; 147 L Ed 2d 49 (2000).* [*6] A parent is constitutionally entitled to a hearing on his fitness before his children are removed from his custody. *Stanley, 405 U.S. at 658.* "A due-process violation occurs when a state-required breakup of a natural family is founded solely on a 'best interests' analysis that is not supported by the requisite proof of parental unfitness." *In re JK, 468 Mich 202, 210; 661 NW2d 216 (2003).*

Child protective proceedings are initiated by the filing of a petition. *MCR 3.961(A).* A petition is a complaint alleging "that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child[.]" *MCR 3.903(A)(20).* "[T]he parent, guardian, nonparent adult, or legal custodian who is alleged to have committed an offense against a child" is a respondent. *MCR 3.903(C)(10).* An offense against a child is "an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court" under *MCL 712A.2(b). MCR 3.903(C)(7).*

The procedures outlined by the Juvenile Code and the court rules protect a parent's due process rights. They permit the court to issue an order to take a child into custody [*7] when a judge or referee finds from the evidence "reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child." *MCR 3.963(B)(1)*. Once the child is taken into custody, the parent must be notified and advised "of the date, time, and place of the preliminary hearing," which is to be held within 24 hours after the child has been taken into custody, and a petition is to be prepared and submitted to the court. *MCR 3.921(B)(1)*; *MCR 3.963(C)*; *MCR 3.965(A)(1)*. If the child is in protective custody when the petition is filed, the procedures afforded at the preliminary hearing provide due process to the respondent-parents. They are informed of the charges against them and the court may either release the child to the respondent-parents or order alternative placement. *MCR 3.965(B)(4)* and *(12)(b)*. Before ordering alternative placement, "the court shall receive evidence, unless waived, to establish that the criteria for placement . . . are present. The respondent shall be given an opportunity to cross-examine witnesses, [*8] subpoena witnesses, and to offer proof to counter the admitted evidence." *MCR 3.965(C)(1)*. Thus, the respondent-parents are given notice of the proceedings and an opportunity to be heard before the child can remain in protective custody.

For the court to continue the child in alternative placement and "exercise its full jurisdiction authority," it must hold an adjudicatory hearing at which the factfinder determines whether the child comes within the provisions of § 2(b). *In re MU, 264 Mich App 270, 278; 690 NW2d 495 (2004)*; *Ryan v Ryan, 260 Mich App 315, 342; 677 NW2d 899 (2004)*. Generally, the determination whether the allegations in the petition are true, thus allowing the court to exercise jurisdiction, is made from the respondent's admissions to the allegations in the petition, from other evidence if the respondent pleads no contest, or from evidence introduced at a trial if the respondent contests jurisdiction. *MCR 3.971*; *MCR 3.972*; *MCR 3.973(A)*; *In re PAP, 247 Mich App 148, 152-153; 640 NW2d 880 (2001)*. "The procedural safeguards used in adjudicative hearings protect parents from the risk of erroneous deprivation of their liberty interest in the management of their children." *Id. at 153*. [*9] Once jurisdiction is obtained, the case proceeds to disposition "to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult . . . ." *MCR 3.973(A)*.

There is no dispute that respondent was provided with the procedural safeguards prior to the adjudication. However, he was never adjudicated unfit; only respondent Mays was adjudicated as unfit. This Court upheld the validity of this practice in *In re CR*, in which it held that "[t]he family court's jurisdiction is tied to the children" and thus the petitioner is not required "to file a petition and sustain the burden of proof at an adjudication with respect to every parent of the children involved in a protective proceeding before the family court can act in its dispositional capacity." *In re CR, 250 Mich App at 205*. This Court further observed that if the trial court acquires jurisdiction by a plea from one parent, the court can take measures "against any adult," *MCR 3.973(A)*, and order the nonadjudicated parent to engage in services without alleging and proving that the nonadjudicated parent was abusive or neglectful as provided under § 2(b).[3] *Id. at 202-203*.

3 This [*10] is what is known as the so-called "one parent doctrine."

The essence of respondent's argument on appeal is that the one parent doctrine violates the nonadjudicated parent's due process rights by depriving him of custody of his children without a determination that he is an unfit custodian, as would be established at the adjudicatory hearing. Respondent's argument conflates the adjudicatory and dispositional phases of the proceedings. The adjudicatory phase determines whether a child requires the protection of the court because he or she comes within the parameters of § 2(b). If the child comes within the scope of § 2(b), the trial court acquires jurisdiction and "can act in its dispositional capacity." It is at the dispositional hearing that the court determines "what measures [it] will take with respect to a child properly within its jurisdiction[.]" *MCR 3.973(A)*. It can issue a warning to the parents and dismiss the petition, *MCL 712A.18(1)(a)*, place the child in the home of a parent or a relative under court supervision, *MCL 712A.18(1)(b)*, or commit the child to the DHS for placement, *MCL 712A.18(1)(d)* and *(e)*. Before the court determines what action to take, the DHS must prepare [*11] a case service plan, *MCL 712A.18f(2)*, and the court must "consider the case service plan and any written or oral information concerning the child from the child's

parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, lawyer-guardian ad litem, attorney, or guardian ad litem; and any other evidence offered, including the appropriateness of parenting time, which information or evidence bears on the disposition." *MCL 712A.18f(4)*. See, also, *MCR 3.973(E)(2)* and *(F)(2)*. If the DHS recommends against placing the child with a parent, it must "report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home," *MCR 3.973(E)(2)*, and identify the likely harm to the child if separated from or returned to the parent. *MCL 712A.18f(1)(c)* and *(d)*. The parent is entitled to notice of the dispositional hearing, *MCR 3.921(B)(1)(d)*, and the parties are entitled to an opportunity "to examine and controvert" any reports offered to the court and to "cross-examine individuals making the reports when those individuals are reasonably available." *MCR 3.973(E)(3)*.

If the child is removed from [*12] the home and remains in alternative placement, the court must hold periodic review hearings to assess the parents' progress with services and the extent to which the child would be harmed if he or she remains separated from, or is returned to, the parents. *MCL 712A.19(3)* and *(6)*; *MCR 3.975(A)* and *(C)*. The court must "determine the continuing necessity and appropriateness of the child's placement" and may continue that placement, change the child's placement, or return the child to the parents. *MCL 712A.19(8)*; *MCR 3.975(G)*. Before making a decision, the court must "consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing." *MCR 3.975(E)*. If the child remains out of the home and parental rights have not been terminated, the court must hold a permanency planning hearing within 12 months from the time the child was removed from the home and at regular intervals thereafter. *MCL 712A.19a(1)*; *MCR 3.976(B)(2)* and *(3)*. The purpose of the hearing is to assess the child's status "and the [*13] progress being made toward the child's return home[.]" *MCL 712A.19a(3)*. At the conclusion of the hearing, the court "must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well-being of the child." *MCR 3.976(E)(2)*. See, also, *MCL 712A.19a(5)*. In making its determination, "[t]he court must consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing." *MCR 3.976(D)(2)*. Further, "[t]he parties must be afforded an opportunity to examine and controvert written reports received by the court and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available." *Id.* As with the initial dispositional hearing, each parent is entitled to notice of the dispositional review and permanency planning hearings and an opportunity to participate therein. *MCR 3.920(B)(2)(c)*; *MCR 3.975(B)*; *MCR 3.976(C)*.

These provisions, taken together, satisfy the requirements [*14] of due process. The parent is entitled to notice of the dispositional hearing and an opportunity to be heard before the court makes its dispositional ruling. When it is recommended that the child not be placed with a parent, the court must consider whether the child is likely to be harmed if placed with the parent, which would necessarily entail a determination regarding that parent's fitness as a custodial parent. Once the court determines that the child should not be placed with the parents, it may continue the child in alternative placement or return the child to the parents depending on the circumstances of the parents and the child, again considering whether the child is likely to be harmed if placed with the parent, which would necessarily entail a determination regarding that parent's fitness as a custodial parent. Respondent does not contend that these procedures were not followed here.

Accordingly, the trial court did not violate respondent's due process rights by continuing to exercise jurisdiction over the children without subjecting respondent to an adjudication.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Cynthia Diane Stephens

CONCUR BY: Christopher M. Murray

CONCUR

MURRAY, P.J., (*concurring*).

Respondent [*15] father and his amicus curiae argue that his constitutional right to due process of law was violated when the trial court refused to place the children with him in the absence of a finding of harm or danger to the children in doing so. With respect to the procedural due process aspect of respondent's argument,[1] I concur with the majority opinion that the statutory procedures in place under Michigan law adequately protect a parent from having children removed from their custody during the pendency of proceedings without adequate findings. However, for the reasons expressed briefly below, it is also evident that respondent's substantive due process right was not violated given the evidence of record at the time the motion was decided on March 8, 2012.

1 The federal due process clause that applies to the States is contained in the *Fourteenth Amendment to the United States Constitution*, and provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const, Am XIV, § 1. Although the constitutional language only references process, *People v Sierb, 456 Mich 519, 522-523; 581 NW2d 219 (1998)*, the United States Supreme Court has held [*16] that there is both a procedural and substantive part to the Fourteenth Amendment, see *Mettler Walloon, LLC v Melrose Twp, 281 Mich App 184, 197; 761 NW2d 293 (2008)*.

As recognized by the majority and respondent, there is no dispute that a parent has a liberty interest in raising his child that is protected by the due process clause of the United States Constitution. U.S. Const, Am XIV, § 1; *Smith v Org of Foster Families for Equality & Reform, 431 U.S. 816, 842-844; 97 S Ct 2094; 53 L Ed 2d 14 (1977)*. Respondent's argument is that the trial court violated this constitutional right to due process of law (which he claims to be both procedural and substantive) by refusing to place the children with him during the pendency of the proceedings without first finding that he would be a danger to the children or otherwise committed abuse and neglect against the children. In making this argument respondent challenges this Court's decision in *In re CR, 250 Mich App 185; 646 NW2d 506 (2002)*, where we held that once the circuit court acquires jurisdiction over the children it can order a parent to comply with certain orders and conditions, even if that parent was not a respondent in the proceedings, [*17] because jurisdiction over the children was established based on a plea by the other parent. *Id. at 202-203*. However, *In re CR* addresses an issue not presented by this case. As just noted, *In re CR* stands for the proposition that a non-respondent parent may be subject to court orders and conditions even when jurisdiction over the children is based exclusively on the other parent's conduct. The issue presented in this case is whether respondent may be deprived of the custody of his children during the pendency of these proceedings absent evidence of his particular unfitness. These are substantially different issues and therefore there is no basis in this case upon which to challenge the holding of *In re CR*.

Additionally, in light of the evidence presented to the trial court, it is readily apparent that the trial court's decision not to turn the children over to respondent did not violate his substantive due process right in the liberty interest he has as a parent as recognized by the United States Supreme Court. Specifically, the evidence presented showed that there was a significant factual question as to whether respondent had *any* contact with his children for a number of years prior [*18] to the February 24, 2012, hearing. At that hearing respondent testified that he most recently saw one child the previous month on her tenth birthday, and that he had seen both children "less than 10 times" in the year since his rights to the children were terminated. However, testifying directly to the contrary was his ten-year-old daughter, who testified that she did not see respondent on her tenth birthday and had not seen him in quite some time. Indeed, the child testified that she could not remember the last time she saw her father.

As a result of this testimony and the trial court's findings,[2] the liberty interest recognized by the due process clause as enunciated in *Stanley v Illinois, 405 U.S. 645; 92 S Ct 1208; 31 L Ed 2d 551 (1972)*, is simply not applicable here. Indeed, the *Stanley* Court repeatedly emphasized that the interest that it was recognizing was "that of a man in the children he had sired *and raised*," and that the father "was entitled to a hearing on his fitness as a parent *before his children were taken from him* . . . ." *Stanley, 405 U.S. at 649, 651*. (Emphasis added.) See, also, *Stanley, 405 U.S. at 652* ("*Stanley's* [the father] interest in *retaining* custody of his [*19] children is cognizable and substantial.") and *405 U.S. at 655* ("[N]othing in this record indicates that Stanley is or has been a neglectful father who has not cared for his children."). (Emphasis added.) Indeed, the Court in *Lehr*

v Robertson, 463 U.S. 248, 260; 103 S Ct 2985; 77 L Ed 2d 614 (1983), quoting *Caban v Mohammed, 441 U.S. 380, 397; 99 S Ct 1760; 60 L Ed 2d 297 (1979)* (STEWART, J., *dissenting*), recognized that "'[*p*]*arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring.*'" (Emphasis in the original.)

> 2 Though not as elaborate as they could be, one of the findings by the trial court in denying the motion was that although there is a presumption that a parent is fit, in the present case it did not apply because, since March 2009 when the case began and February 2012, the evidence revealed that respondent had either shown no interest in, or no ability to, parent the children.

Consequently, because there was a question about whether respondent had any contact or relationship with the two children at the time the trial court was asked to place the children with him, and because the children were not [*20] being "returned" or "taken from" respondent since he did not have custody of them, and because respondent had an opportunity to present evidence on this issue at the hearing held in February 2012, the liberty interest recognized in *Stanley* was neither applicable nor violated by the trial court's decision. See *In re CAW (On Remand), 259 Mich App 181, 185; 673 NW2d 470 (2003)*.

For these reasons, I concur in the decision to affirm the trial court's order.

/s/ Christopher M. Murray

EXHIBIT B

1 of 1 DOCUMENT

In the Matter of MAYS, Minors. In the Matter of MAYS, Minors.

No. 297446, No. 297447

COURT OF APPEALS OF MICHIGAN

2010 Mich. App. LEXIS 2273

November 23, 2010, Decided

SUBSEQUENT HISTORY: Appeal granted by *In re Mays, 489 Mich. 857, 795 N.W.2d 6, 2011 Mich. LEXIS 449 (2011)*
Appeal granted by *In re Mays, 489 Mich. 857, 795 N.W.2d 6, 2011 Mich. LEXIS 452 (2011)*
Motion granted by *Dep't of Human Servs. v. Mays (In re Mays), 800 N.W.2d 604, 2011 Mich. LEXIS 1384 (Mich., 2011)*
Motion granted by *In re Mays, 802 N.W.2d 610, 2011 Mich. LEXIS 1583 (Mich., 2011)*
Affirmed in part and reversed in part by, Remanded by *In re Mays, 490 Mich. 997, 807 N.W.2d 304, 2012 Mich. LEXIS 41 (2012)*
Reversed by, Remanded by *In re Mays, 490 Mich. 993, 807 N.W.2d 304, 2012 Mich. LEXIS 42 (2012)*
Application denied by *In re Mays, 491 Mich. 931, 813 N.W.2d 287, 2012 Mich. LEXIS 759 (2012)*
Appeal after remand at, Decision reached on appeal by *In re Mays, 2012 Mich. App. LEXIS 2461 (Mich. Ct. App., Dec. 6, 2012)*

PRIOR HISTORY: [*1]
Wayne Circuit Court. Family Division. LC No. 09-485821. Wayne Circuit Court. Family Division. LC No. 09-485821.

JUDGES: Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

OPINION

PER CURIAM.

In these consolidated appeals, respondent parents, U. Mays and W. Philips, appeal as of right from the trial court's order that terminated their parental rights to their two minor children. [1] We affirm.

1 *MCL 712A.19b(3)(c)(i)* (conditions of adjudication continue to exist); (3)(g) (failure to provide proper care and custody); and (3)(j) (reasonable likelihood of harm if child is returned to parent).

I. BASIC FACTS

A. EVENT THAT LED TO PETITION FOR INITIAL JURISDICTION

Department of Human Services (DHS) foster care worker Carolyn Moore testified that she was the worker on the case from the time the two minor children came into care in March 2009 until October 2009. She drafted the December 2009 termination petition. The trial court adjudicated the children to come within the jurisdiction of the court in April 2009, after U. Mays admitted that she

left the children home alone to go to her sister's house. The two children were nine years old and seven years old, respectively, at the time of the incident. It is not clear [*2] from the record how long U. Mays left the children alone, but U. Mays' former boyfriend found them alone at 1:00 a.m. and took them to the police station. The children divulged that this was not the only time U. Mays had left them alone.

B. TESTIMONY REGARDING U. MAYS

The trial court ordered U. Mays to comply with a treatment plan. U. Mays' treatment plan included individual counseling, parenting classes, drug screens, a Clinic for Child Study evaluation, suitable housing, and a legal source of income. Because of admitted marijuana use, U. Mays was also required to submit to drug testing.

Moore testified that U. Mays did not comply with the treatment plan. U. Mays did attend the Clinic for Child Study evaluation in July 2009. However, although Moore had provided U. Mays with bus passes, U. Mays attended only three of 12 parenting classes. U. Mays never followed through on rescheduling the classes. U. Mays was also referred for individual therapy, and although there was no set number of sessions that U. Mays was expected to attend, she only attended approximately two sessions. Because U. Mays admitted to marijuana use, she was expected to submit to drug screens. However, she did not follow [*3] through with those. U. Mays never maintained suitable housing. She lived in a rental home owned by the maternal grandmother, and U. Mays reported that her utilities had been turned off. Her uncle had to help her get the utilities turned back on. U. Mays did not have a source of income. She was unemployed and did not receive disability benefits.

Moore believed that termination of U. Mays' parental rights was warranted based on her failure to comply with the court order. Moore did not believe that anything in U. Mays' daily activities prevented her from complying with her treatment plan. She did not believe that additional time would result in compliance.

Moore testified that the children were placed with their maternal grandmother and that U. Mays and W. Phillips could have visited as frequently as they wanted. The grandmother reported that U. Mays visited with the children once a week and that W. Phillips visited "sometimes," but Moore did not know how often. During cross-examination, Moore indicated that U. Mays used to visit more frequently but had visited less over time.

U. Mays testified that she did not take the time to consider the consequences of her actions when she left the children [*4] home alone. She did not believe that she was unable to care for her children: "I never thought I was a bad parent." She believed that her lack of education was the only problem. She started school in June 2009, just a few months after the children were removed. And she believed that it was her way of obtaining a better life for her children.

U. Mays claimed that her attendance at business school affected her ability to complete the treatment plan. However, U. Mays admitted that she understood that she needed to attend and benefit from services under the treatment plan in order to be reunified with her children. She also admitted that she understood that her attendance at business school was not part of the treatment plan. U. Mays denied having transportation issues visiting the children. She relied on her mother for transportation to see the kids and used the bus card provided by DHS to get to school. She admitted that she could have used the card to go to therapy and parenting classes. She admitted that she attended school more regularly than she attended parenting classes or counseling. U. Mays conceded that she never asked anyone to accommodate her schedule.

U. Mays admitted that [*5] she would drink on the weekend and that she used marijuana, but not very often. She last used marijuana a month before the termination hearing. U. Mays used to receive food stamps and a weekly cash payment. However, at the time of the termination hearing, she had no income and was no longer receiving temporary assistance.

C. TESTIMONY REGARDING W. PHILLIPS

Moore testified that, like U. Mays, W. Phillips' treatment plan included individual counseling, parenting classes, housing, and income. However, he did not have to submit to drug screens. W. Phillips missed a few parenting classes, but Moore acknowledged that W. Phillips did receive a certificate of completion the parenting classes in December 2009. Nevertheless, Moore did not believe that W. Phillips benefited from the classes. W. Phillips attended a few counseling sessions but did not appear to benefit from those either. W. Phillips lived with a relative. He worked part time with a moving company. W. Phillips provided the children with some income. Placement in W. Phillips' home was not an

option because some work needed to be done to the home. Moore believed that termination of W. Phillips' parental rights was necessary.

W. Phillips [*6] testified that he was no longer in a relationship with U. Mays. They separated approximately eight years ago. Since that time, W. Phillips maintained regular contact with the children and visited them after work and on the weekends. He provided whatever U. Mays told him the children needed. W. Phillips was not living with U. Mays at the time she left the children unattended. He had nothing to do with the incident.

U. Mays testified that W. Phillips had been involved with the children while they were in her care. He visited three or four times a month. She felt she could depend on him for support. She believed he visited as often as he could and would buy them clothes and shoes, but "I basically take care of my own children."

W. Phillips testified that he was aware he needed to complete parenting classes and individual counseling. He completed the parenting classes but admitted that he did not attend individual counseling. W. Phillips did not have a car, so he needed to take three different buses home from work. W. Phillips claimed that his bus schedule would often make him late for his counseling appointments, resulting in the counselor leaving before he got there. Because he worked [*7] for a moving company, his work hours varied based on the jobs he was assigned. He might be done with work as early as 3:00 p.m. or as late as 9:00 p.m. W. Phillips believed he attended only three therapy sessions. He never told anyone that the sessions conflicted with his work schedule or that transportation was an issue. W. Phillips admitted that he missed some court hearings because of work and scheduling errors.

W. Phillips explained that U. Mays' sister would usually bring the children to U. Mays' house in order for U. Mays and W. Phillips to visit with them. W. Phillips never visited the children at the maternal grandmother's home because of work and the bus schedule. He last saw the children two weeks ago at U. Mays' house.

W. Phillips lived with his half-sister, her husband, and their 15-year-old daughter in a home owned by the half-sister's mother. He had been living there for the past two years. The house was suitable for the children to come and live in, but W. Phillips admitted he never expressed any desire for them to do so. "[I]f it came down to that, yes, they could come live with me." He believed his sister would approve. Still, W. Phillips believed that the children were [*8] better off where they were with the maternal grandmother.

D. THE TRIAL COURT'S RULING

The referee recommended termination of U. Mays' and W. Phillips' parental rights, and the trial court adopted the referee's findings of fact and conclusions of law. U. Mays and W. Phillips now appeal as of right.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

U. Mays, W. Phillips, and the children's lawyer guardian ad litem (L-GAL) argue that the trial court erred in terminating U. Mays' and W. Phillips' parental rights.

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence. [2] We review for clear error a trial court's decision terminating parental rights. [3] A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. [4] Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. [5]

2 *MCL 712A.19b(3); In re Sours Minors, 459 Mich 624, 632; 593 NW2d 520 (1999).*

3 *MCR 3.977(K); In re Trejo Minors, 462 Mich 341, 356-357; 612 NW2d 407 (2000);* [*9] *Sours, 459 Mich at 633.*

4 *In re JK, 468 Mich 202, 209-210; 661 NW2d 216 (2003).*

5 *MCR 2.613(C); In re Miller, 433 Mich 331, 337; 445 NW2d 161 (1989).*

B. TERMINATION OF U. MAYS' PARENTAL RIGHTS

U. Mays claims that the trial court erred in terminating her parental rights because she just needed some additional time. We disagree that additional time was warranted. A full year transpired between the time the children were initially removed in March 2009 and the time of the termination hearing in March 2010. Still, during that period of time U. Mays only minimally complied with her treatment plan. She complains that she

was provided *only* two referrals, but the fact remains that she did not complete parenting classes, individual counseling, or drug screens and provided no valid explanation. There is no basis to conclude that the passage of additional time would have been beneficial.

While it was admirable that U. Mays sought to better herself through additional education, attending school was not a component of her treatment plan. Additionally, U. Mays admitted that her class work took place in the afternoons from 1:00 p.m. until 5:00 p.m. and that the parenting classes took place in the morning. [*10] Other than stating that the individual counselor would not come out to the house after 6:00 p.m., U. Mays provided no explanation for why she could not attend counseling. While U. Mays' attorney intimated that transportation was an issue, U. Mays' own testimony refutes that. She admitted that DHS provided her with bus passes that she used to attend school and that she could have used those same passes to attend the sessions required under the treatment plan.

The L-GAL cites *MCL 712A.19a(1)* [6] and *MCR 3.976*, [7] which address the timing of permanency planning hearings, to argue that the trial court's decision to initiate proceedings to terminate U. Mays' parental rights when the children had only been in foster care for seven months was premature. More specifically, the L-GAL argues that "the court . . . [did] not have to consider the question of a permanent plan, particularly termination of parental rights until the child(ren) have been in foster care for 12 months." The L-GAL adds that, under *MCL 712A.19a(6)(a)*, "The court is not required to order the agency to initiate proceedings to terminate parental rights if . . . [t]he child is being cared for by relatives." We find no merit to [*11] the L-GAL's contention. Neither the statute nor the court rule require the trial court to wait until the children have been in foster care for 12 months before initiating proceedings to terminate parental rights, especially when it is obvious that the parent is not invested in the treatment plan. The fact that relatives were caring for the children does not alter this conclusion.

> 6 *MCL 712A.19a(1)* provides, in pertinent part: "[I]f a child remains in foster care and parental rights to the child have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home."

> 7 *MCR 3.976(B)(2)* provides, in pertinent part: "[T]he court must conduct an initial permanency planning hearing no later than 12 months after the child's removal from the home, regardless of whether any supplemental petitions are pending in the case."

The L-GAL also cites *In re Newman* [8] for the proposition that U. Mays should have been given additional time. In *Newman*, this Court found that the parents had not been given a reasonable amount of time to improve the condition of their home, even after the passage of 26 months. [9] However, *Newman* is distinguishable [*12] from this case. In *Newman*, the primary reason for removal was the unsanitary condition of the home. The mother in *Newman* was intellectually challenged, and this Court found that the services offered to the family were not reasonably calculated to assist the family toward reunification. [10] Here, U. Mays does not argue that she was of below average intelligence or that the services offered were not reasonably calculated to facilitate reunification. Instead, U. Mays admits that she failed to timely comply with the terms of the treatment plan and is simply seeking more time.

> 8 *In re Newman, 189 Mich App 61; 472 NW2d 38 (1991).*
> 9 *Id. at 70-71.*
> 10 *Id.*

The L-GAL additionally cites *In re Boursaw* [11] and *In re Hulbert* [12] for the proposition that U. Mays' potential for neglect or abuse was merely speculative and not grounded in any evidence. The L-GAL notes that what brought the children into care was an isolated incident in which U. Mays left the children unattended. He argues that any claim that the children would be at risk of future harm for abuse or neglect was conjecture. At the same time, the L-GAL acknowledges that U. Mays could have done more to comply with her treatment plan. Indeed, a parent's [*13] failure to comply with the terms of a court-ordered treatment plan is indicative of neglect. [13]

> 11 *In re Boursaw, 239 Mich App 161; 607 NW2d 408 (1999)*, rev'd on other grounds *462 Mich 341 (2000).*
> 12 *In re Hulbert, 186 Mich App 600; 465 NW2d 36 (1990).*
> 13 *JK, 468 Mich at 214*; *Trejo, 462 Mich at 346 n 3, 360-363, 361 n 16.*

In addition to the fact that U. Mays failed to comply with parenting classes, individual therapy, and drug screens, there was also evidence that U. Mays was without a legal source of income and housing. The L-GAL makes the bald assertion that U. Mays had adequate housing; however, U. Mays lived in a home that the maternal grandmother owned. She had her utilities turned off at one point, but her uncle helped her with the payment to have them restored. And U. Mays testified that she was no longer eligible for temporary assistance. It was clear that U. Mays relied on family for her needs. She could not provide for herself, let alone a child. Notably, U. Mays also has two other children who are not in her care.

We conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of U. Mays' parental [*14] rights.

C. TERMINATION OF W. PHILLIPS' PARENTAL RIGHTS

With regard to W. Phillips, the L-GAL argues the trial court erred in failing to first determine whether U. Mays was legally married to another man and whether the children were born during the marriage. If so, the children were presumed to be the children of U. Mays' husband, and a biological father cannot be considered even a putative father. [14] U. Mays did not raise this issue before the trial court and it is therefore not preserved for appellate review. Although the L-GAL argues that unpreserved issues of law may be considered by this Court, this is only true when all the facts necessary for the resolution of the issue have been presented. [15] In this case, there was one statement in U. Mays' testimony that she was married, but there was no further indication in the record that she was ever in fact married or that such a marriage existed at the time these children were born. Therefore, the facts necessary for the resolution of this issue were not presented to the trial court or this Court, and we decline to further consider this argument.

14 *In re KH, 469 Mich 621, 624; 677 NW2d 800 (2004).*

15 *In re BAD, 264 Mich App 66, 72; 690 NW2d 287 (2004).*

Like [*15] U. Mays, W. Phillips' treatment plan included a Clinic for Child Study evaluation, individual counseling, parenting classes, housing, and income. W. Phillips completed the parenting classes. However, although W. Phillips was aware that he also needed to complete individual counseling in order to be reunited with the children, he admitted that he did not attend individual counseling due to conflicts with work and the bus system. W. Phillips never told anyone that the therapy sessions conflicted with his work schedule or that transportation was an issue. Incredibly, W. Phillips denied that he was required to attend a Clinic for Child Study evaluation, testifying that his parenting instructor told him not to worry about it.

As discussed above with regard to U. Mays, W. Phillips' failure to comply with the treatment plan provided evidence of neglect. The demands of the treatment plan were very basic. There was no valid excuse for W. Phillips to fail to attend individual therapy after at least two referrals.

In addition to W. Phillips' failure to comply with the treatment plan, he was not in a position to provide for the children. W. Phillips lived with his half-sister, her husband, and their [*16] 15-year-old daughter in a home owned by the half-sister's mother. He had been living there for the past two years. And although W. Phillips believed that his half-sister would allow the children to live in the home, he believed that the children were better off living with the maternal grandmother. W. Phillips did not really indicate a desire to care for the children. He considered himself the last resort. Additionally, like U. Mays, he lived at the mercy of family members and had two other children, neither of whom was in his care.

Based on the foregoing, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of W. Phillips' parental rights.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

U. Mays, W. Phillips, and the children's L-GAL argue that the trial court erred in its best interests analysis.

Once the DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights. [16]

[*17] There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available. [17] We review the trial court's decision regarding the child's best interests for clear error. [18]

16 *MCL 712A.19b(5); Trejo, 462 Mich at 350.*

17 *Trejo, 462 Mich at 353.*

18 *Id. at 356-357.*

B. ANALYSIS

Even if it is assumed that U. Mays shared a bond with the children, that bond did not prevent termination. Again, U. Mays was aware that the only way she would be reunified with the children was if she complied with the terms of her treatment plan. She did not do so. In addition to the lack of effort to attend parenting classes and individual therapy, U. Mays was without income or stable housing, relying upon family for her maintenance. The trial court reasonably concluded that the children had been in care for a year and were entitled to permanence and stability.

Likewise, even if it is assumed that W. Phillips shared a bond with the children, that bond did not prevent termination. Again, W. Phillips was aware that the only way he would be reunified with the children was if he complied with the terms of his treatment plan. Yet he did not [*18] do so. The trial court reasonably concluded that the children had been in care for a year and were entitled to permanence and stability.

Accordingly, we conclude that the trial court did not clearly err in finding that termination of both U. Mays' and W. Phillips' parental rights was in the children's best interests.

We affirm.

/s/ Donald S. Owens

/s/ William C. Whitbeck

/s/ Karen M. Fort Hood

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEO RATTÉ, a minor, by his Next Friend, CLAIRE ZIMMERMAN; CLAIRE ZIMMERMAN, individually; and CHRISTOPHER RATTÉ, individually,

Plaintiffs,

v.

MICHIGAN DEPARTMENT OF HUMAN SERVICES DIRECTOR MAURA CORRIGAN, in her official capacity; CITY OF DETROIT; OFFICER CELESTE REED, in her individual capacity; OFFICER HALL, in his individual capacity; OFFICER KNOX, in his individual capacity; CASEWORKER JANET WILLIAMS, in her individual capacity; CASEWORKER SUALYN HOLBROOK, in her individual capacity; CASEWORKER TURNER, in her individual capacity; CASEWORKER WILSON, in her individual capacity; CASEWORKER JANE DOE, in her individual capacity; and CASEWORKER JOHN DOE, in his individual capacity,

Defendants.
_____/

Case No.

Hon.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Leo Ratté, through his parent and Next Friend, Claire Zimmerman, and Claire Zimmerman and Christopher Ratté, in their individual capacities, by their counsel, hereby submit their Complaint against Defendants and state as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983, by minor Leo Ratté and his biological parents, Claire Zimmerman and Christopher Ratté, for blatant violations of their United States Constitutional rights under the Fourteenth Amendment and Leo

Ratté's rights under the Fourth Amendment, by City of Detroit Police Officers and Michigan Department of Human Services Child Protection Case Workers. After an innocent mix-up regarding the partial consumption of a Mike's Hard Lemonade beverage at a Detroit Tigers baseball game at Comerica Park, seven-year-old Leo Ratté was promptly and unconstitutionally removed from the custody of his parents in the middle of the night and placed into a foster home. This improper action was made (1) without a valid court order; (2) absent any emergency or other exigent circumstances; (3) against medical evidence demonstrating Leo Ratté's blood did not contain any level of alcohol; and (4) refusing to release Leo Ratté to his mother, Claire Zimmerman, even though she was not at the Tigers game and had no involvement whatsoever with the consumption of the lemonade. Accordingly, Plaintiffs seek a declaratory judgment from this Court finding that the Michigan emergency removal statute (M.C.L. § 712A.14(1)) and court rule (Mich. Ct. R. 3.963(A)) are unconstitutional on their face and as applied to Plaintiffs. Plaintiffs also seek damages for the extreme emotional distress caused by Defendants' illegal conduct.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), because this case involves a federal question and federal law under 42 U.S.C. § 1983.

3. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391(b), because the actions which give rise to the claims asserted in this Complaint arose in this district, and Defendants reside or are located within this district.

PARTIES

4. Plaintiffs are members of a family who reside together in Ann Arbor, Washtenaw County, Michigan.

5. Plaintiff Leo Ratté is a minor child. During the events at issue in this litigation, he was seven years old. At the time of the filing of this Complaint, Leo Ratté is ten years old.

6. Plaintiff Claire Zimmerman is Plaintiff Leo Ratté's biological mother. She is a professor of art history and architecture at the University of Michigan.

7. Plaintiff Christopher Ratté is Plaintiff Leo Ratté's biological father. He is a professor of classics at the University of Michigan.

8. Defendant City of Detroit ("Detroit" or the "City") is a municipal corporation organized and existing under the laws of the State of Michigan. The City of Detroit Police Department ("DPD" or the "Department") is the City's agent, created and authorized by the City to conduct acts as alleged herein.

9. Defendant Officer Celeste Reed ("Reed") was, at all times material to this action, an officer with the DPD, employed by the City. She is being sued in her individual capacity.

10. Defendant Officer Hall ("Hall") was, at all times material to this action, an officer with the DPD, employed by the City. He is being sued in his individual capacity.

11. Defendant Officer Knox ("Knox") was, at all times material to this action, an officer with the DPD, employed by the City. During the event at issue, Defendant Knox was the supervisor of Defendant Reed. Defendant Knox is being sued in his individual capacity.

12. Defendant DPD Officers Reed, Hall, and Knox are collectively referred to herein as the "Defendant Police Officers."

13. Defendant Director Maura Corrigan ("Defendant Corrigan") is the director of the Michigan Department of Human Services ("DHS"). She is being sued in her official capacity.

14. Defendant Caseworker Janet Williams ("Williams") was, at all times material to this action, a caseworker employed with the Wayne County office of DHS. She is being sued in her individual capacity.

15. Defendant Caseworker Sualyn Holbrook ("Holbrook") was, at all times material to this action, a caseworker employed with the Wayne County office of DHS. She is being sued in her individual capacity.

16. Defendant Caseworker Turner ("Turner") was, at all times material to this action, a caseworker employed with the Wayne County office of DHS. She is being sued in her individual capacity.

17. Defendant Caseworker Wilson ("Wilson") was, at all times material to this action, a caseworker employed with the Wayne County office of DHS. She is being sued in her individual capacity.

18. Defendant John Doe ("John Doe") was, at all times material to this action, a caseworker with the DHS. Caseworker John Doe's identity is presently unknown. Defendant John Doe is being sued in his individual capacity.

19. Defendant Jane Doe ("Jane Doe") was, at all times material to this action, a caseworker with the DHS. Caseworker Jane Doe's identity is presently unknown. Defendant Jane Doe is being sued in her individual capacity.

20. Defendant DHS caseworkers Williams, Holbrook, Turner, Wilson, John Doe, and Jane Doe are hereafter referred to collectively as the "DHS Defendants."

FACTUAL ALLEGATIONS

21. On Saturday, April 5, 2008, Christopher Ratté brought his seven-year-old son, Leo Ratté, to Comerica Park in Detroit to attend a Detroit Tigers professional baseball game.

22. Christopher Ratté and Leo Ratté arrived at the game at approximately 3:50 pm, stopping at a concession stand before making their way to their assigned seats.

23. The sign located at the concession stand read: "Canned beer/Mike's Lemonade."

24. Christopher Ratté was unfamiliar with "Mike's Lemonade" or even "Mike's Hard Lemonade" and was unaware the lemonade contained alcohol.

25. There was no identification as to the nature of the type of lemonade. Specifically, absent from the sign was any indication the lemonade being sold was an alcoholic beverage.

26. Christopher Ratté purchased a beer for himself and then asked Leo Ratté whether he wanted a lemonade to drink.

27. Christopher Ratté did not pay attention to the label on the lemonade bottle and handed it to his son.

28. At approximately 6:30 pm, during the top of the 9th inning, Christopher Ratté was approached by a Comerica Park security guard.

29. The security guard picked up the partially full lemonade bottle sitting in front of Leo Ratté and questioned Christopher Ratté as to whether Christopher Ratté was permitting Leo Ratté to drink the lemonade.

30. To Christopher Ratté's surprise, the security guard informed Christopher Ratté the lemonade contained alcohol.

31. Christopher Ratté requested to see the lemonade bottle to view the label, but the security guard refused and told Christopher Ratté he must remain in his seat.

32. A large cluster of security guards assembled at the end of the row where Christopher Ratté and Leo Ratté were seated.

33. Christopher Ratté and Leo Ratté were then informed that they must accompany the security guards to a police substation located in Comerica Park.

34. Once Christopher Ratté and Leo Ratté arrived at the police substation, located within Comerica Park, Defendant Hall of the DPD questioned Christopher Ratté regarding his purchasing the lemonade for Leo Ratté.

35. During this time and at all future times, Christopher Ratté responded he had no idea the lemonade was alcoholic. He further stated that if he had known the drink contained alcohol he would not have given it to his son.

36. Christopher Ratté again requested Defendant Hall to permit him to view the lemonade bottle.

37. Upon reading the label, which had a small notation stating the drink contained five percent alcohol, Christopher Ratté again expressed his surprise to Defendant Hall regarding this discovery.

38. Defendant Hall then informed Christopher Ratté and Leo Ratté that Leo Ratté must submit to examination by the substation medical staff. Christopher Ratté and Leo Ratté proceeded to the medical clinic where two nurses conducted a cursory examination of Leo Ratté.

39. Although the medical examination resulted in no findings that Leo Ratté suffered any adverse reactions from consuming the lemonade, against Christopher Ratté's will,

Leo Ratté was forced by Defendant Hall to travel in an ambulance to Children's Hospital in Detroit for further examination.

40. During this time, Christopher Ratté contacted his wife, Claire Zimmerman, on his cell phone and informed her that their son, Leo Ratté, was being taken to the hospital for examination.

41. At approximately 7:00 pm, the ambulance arrived at Children's Hospital. Leo Ratté was placed into an examination room, blood samples were taken, and Leo Ratté was examined by Dr. Sethuraman.

42. Shortly thereafter, Ms. Zimmerman arrived at the hospital.

43. Following his physical examination of Leo Ratté, Dr. Sethuraman concluded Leo Ratté appeared "normal," that there was "no trace of alcohol seen," and "decided to medically clear him." (This information is contained in a document which is in Defendants' possession.)

44. At approximately 7:15 pm, Christopher Ratté was taken into a separate room by Defendant Reed, a DPD officer from the Child Abuse Division.

45. Defendant Reed questioned Christopher Ratté at length and requested Christopher Ratté provide a signed statement, to which Christopher Ratté obliged.

46. Prior to receiving the results of Leo Ratté's blood test and armed with information that Christopher Ratté was unaware the lemonade contained alcohol, Defendant Reed informed Christopher Ratté that Leo Ratté was to be transferred to the DHS.

47. Even though Leo Ratté's mother, Claire Zimmerman, had no involvement with the activities at the Tigers game, was available to take custody, and vehemently demanded

that her son be released to her, Defendant Reed refused to release Leo Ratté to her or her husband, Christopher Ratté.

48. Defendant Reed's only explanation was that her supervisor, Defendant Knox, was "pushing this case to impress her new boss."

49. Defendant Reed then filed a fraudulent complaint (the "Complaint") with the Intake Unit of the Wayne County Juvenile Detention Center, falsely alleging she [Defendant Reed] "observed [Leo Ratté] to be intoxicated." (Copy of Complaint attached as Exh. 1).

50. The Complaint made no mention of the blood alcohol test given to Leo Ratté, which resulted in a conclusive showing that no alcohol was detected in Leo Ratté's bloodstream, or the physical examination conducted by Dr. Sethuraman.

51. The Complaint did not allege Leo Ratté would be in imminent harm if released to his father.

52. The Complaint did not allege Leo Ratté would be in imminent harm if released to his mother, who was not involved in the mix-up regarding the lemonade.

53. Further, upon information and belief, the professionals at Children's Hospital were never even interviewed by Defendant Reed prior to filing the Complaint.

54. Included with the fraudulent Complaint was an equally improper Petition for Child Protective Proceedings (the "Petition") seeking the issuance of an order removing Leo Ratté from the custody of his parents. (Copy of Petition attached as Exh. 2).

55. Christopher Ratté was informed that the Complaint and Petition were given to an intake referee at the Wayne County Juvenile Detention Center.

56. Christopher Ratté was further told that the electronic signature of a judge was "affixed" onto an invalid order (the "Order").

57. If the electronic signature was affixed to the Order, it was done without judicial review and in violation of Michigan law.

58. Plaintiffs were never served with this "Order" and are not certain that any such "Order" was ever entered.

59. At approximately midnight, Defendants Jane Doe and John Doe from the Wayne County Department of Human Services arrived at Children's Hospital.

60. Christopher Ratté and Claire Zimmerman were then informed that Leo Ratté would not be permitted to stay overnight at the hospital and would be taken by DHS and placed into foster care.

61. At that time, Defendants Reed, Jane Doe and John Doe led Plaintiffs to believe that Leo Ratté would be released into the custody of his aunts the following morning, once they arrived from out of town. Subsequently, similar assurances were given by Defendant Turner.

62. At approximately 7:45 am on April 6, 2010, after driving all night from Massachusetts, Leo Ratté's aunts arrived at DHS.

63. Contrary to prior assurances, the aunts were informed by Defendant Wilson that they would not be allowed to see or speak with Leo Ratté.

64. After repeated conversations with Defendant Reed and Defendant Williams, the aunts were told that if they checked into a hotel room, Leo Ratté would be placed into their custody.

65. However, when the aunts returned from checking into the hotel, they were informed that Leo Ratté had already been placed into foster care.

66. Despite numerous calls to DHS from Christopher Ratté and Claire Zimmerman, they were constantly placed on hold and were unable to speak to anyone from DHS regarding the situation.

67. It was not until approximately 2:00 pm on April 6, 2010, that Christopher Ratté finally managed to speak with Defendant Turner's supervisor, Defendant Holbrook.

68. Defendant Holbrook informed Christopher Ratté that Leo Ratté would not be released to his aunts and that no one from the family would be allowed to see Leo Ratté.

69. Defendant Holbrook further informed Christopher Ratté that he and his wife would only be allowed to speak with Leo Ratté as permitted by the foster parents.

70. During the remainder of the day, Christopher Ratté and Claire Zimmerman had, at a minimum, three further telephone conversations with Defendant Holbrook. During each such conversation, Christopher Ratté and Claire Zimmerman were again informed that they were not permitted to see or speak with Leo Ratté.

71. It was not until Monday, April 7, 2008, that Leo Ratté was finally released into the custody of his mother, Claire Zimmerman. Such decision did not occur until Christopher Ratté agreed to temporarily move out of the family home and not see or speak with his son, Leo Ratté, unless supervised by Claire Zimmerman.

72. Shortly thereafter, all pretrial charges against Christopher Ratté were dropped and he was permitted to return home to his family.

73. Plaintiffs suffered extreme stress, anxiety, and trauma from the conduct of Defendants, as alleged herein.

74. Defendants were acting under the color of law at all times relevant to this complaint.

75. The acts of Defendant Police Officers were done pursuant to the policy, practice and custom of the City and the Police Department in assisting DHS Defendants in removing children from their parents without exigent circumstances or imminent danger, and without the consideration of whether or not a different parent or relative is available.

76. According to local attorneys and child advocacy experts familiar with child advocacy proceedings, the City of Detroit Police Department maintains a general and ongoing practice of assisting DHS case workers in removing children, in absence of a valid court order, without regard to whether children are in imminent danger of harm or other exigent circumstances exist.

77. The City, Defendant Police Officers, and the DHS Defendants were indifferent to Plaintiffs' constitutional rights.

COUNT I
DECLARATORY JUDGMENT

78. Plaintiffs incorporate by reference all prior allegations of this Complaint into this Count.

79. M.C.L. § 712A.14(1) and Mich. Ct. R. 3.963(A) are unconstitutional on their face, and as applied to Plaintiffs, because neither the statute nor the rule requires, in the absence of a valid court order, that removal of a child occur only under "exigent circumstances" or when there is "imminent danger," as required by the guarantees of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

80. M.C.L. § 712A.14(1) and Mich. Ct. R. 3.963(A) are also unconstitutional on their face and as applied to Plaintiffs, because in the absence of a valid court order, neither the statute nor the rule requires officers to consider placement of the child with the non-offending

parent prior to a minor child's removal, in violation of the Fourteenth Amendment to the United States Constitution.

81. Plaintiffs seek a declaratory judgment finding that M.C.L. § 712A.14(1) and Mich. Ct. R. 3.963(A) are unconstitutional and in violation of the Fourteenth Amendment to the United States Constitution.

COUNT II
FOURTEENTH AMENDMENT VIOLATION
SUBSTANTIVE DUE PROCESS

82. Plaintiffs incorporate by reference all prior allegations of this Complaint into this Count.

83. Defendants, by their unlawful acts and acting under the color of Michigan law, violated Christopher Ratté and Claire Zimmerman's right to the care, custody and association with their child, Leo Ratté, in violation of their Fourteenth Amendment substantive due process right to family integrity.

84. Defendants, by their unlawful acts and acting under the color of Michigan law, deprived Leo Ratté of his right to receive such care, custody and association with his parents, in violation of his Fourteenth Amendment substantive due process right to family integrity.

85. As further alleged herein, all Plaintiffs suffered such deprivations with respect to Defendants' removal of Leo Ratté from the custody of his parents and placement with a foster family.

COUNT III
FOURTEENTH AMENDMENT VIOLATION
PROCEDURAL DUE PROCESS

86. Plaintiffs incorporate by reference all prior allegations of this Complaint into this Count.

87. The Fourteenth Amendment requires government provide procedural due process before making a decision to infringe upon a person's life, liberty, or property interest.

88. Defendants, by their unlawful acts and acting under the color of Michigan law, violated Claire Zimmerman's right to family integrity, without providing constitutionally adequate process.

89. Defendants, by their unlawful acts and acting under the color of Michigan law, violated Christopher Ratté's rights to family integrity and liberty, without providing constitutionally adequate process.

90. Defendants, by their unlawful acts and acting under the color of Michigan law, violated Leo Ratté's rights to family integrity and liberty, without providing constitutionally adequate process.

91. Plaintiffs were simply not afforded any process prior to the removal of Leo Ratté from his parent's custody, in the absence of a valid court order and without regard to whether Leo would face imminent harm if he was released to one or both of his parents, or to his aunts.

COUNT IV
FOURTH AMENDMENT VIOLATION
UNLAWFUL SEIZURE

92. Plaintiffs incorporate by reference all prior allegations of this Complaint into this Count.

93. Defendants, by their acts and acting under the color of Michigan law, violated Leo Ratté's rights against unreasonable seizures under the Fourth Amendment to the United States Constitution.

94. Leo Ratté suffered such deprivations as a result of his removal from the custody of his parents, his being taken into protective custody, and his placement into a foster home.

95. The unlawful seizure of Leo Ratté by Defendants was done without a duly authorized court order, without probable cause, and was not justified by any exigent circumstances, in violation of the Fourth Amendment to the United States Constitution.

PRAYER FOR RELIEF

Plaintiffs request that this Court grant the following:

1. Enter a declaration that M.C.L. § 712A.14(1) and Mich. Ct. R. 3.963(A) violate the Fourteenth Amendment of the United States Constitution and cannot be enforced as currently enacted;

2. Enter a declaration that Plaintiffs' Fourteenth Amendment rights and Leo Ratté's Fourth Amendment rights were violated;

3. Award Plaintiffs' appropriate damages;

4. Award Plaintiffs' reasonable costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

5. Award all other relief that is just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demands trial by jury of all issues so triable.

Respectfully submitted,

s/ Abraham Singer
Abraham Singer (P23601)
singera@pepperlaw.com
Adam A. Wolfe (P71278)
wolfea@pepperlaw.com
Cooperating Attorneys, American Civil Liberties Union Fund of Michigan
PEPPER HAMILTON LLP
100 Renaissance Center, Suite 3600
Detroit, MI 48243-1157
313.259.7110

Michael J. Steinberg (P43085)
msteinberg@aclumich.org
American Civil Liberties Union Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
313.578.6814

Amy L. Sankaran (P70763)
aharwell@umich.edu
Cooperating Attorney, American Civil Liberties Union Fund of Michigan
625 S. State Street
Ann Arbor, MI 48109
734.764.7787

Attorneys for Plaintiffs

DATED: March 24, 2011

EXHIBIT D

STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

LANCE LAIRD,

V File: 112828NA

TAMMY SANDERS
Defendant.
_____/

ADJUDICATION HEARING

BEFORE THE HONORABLE RICHARD N. LAFLAMME, CIRCUIT COURT JUDGE

Jackson, Michigan - Tuesday February 7, 2012

APPEARANCES:

For the People:	MARY K. HANNA-REZMIERSKI P51926 Asst. Prosecutor 312 South Jackson Street Jackson, MI 49201 (517) 788-4283
For Respondent Mother:	Shelley M. Dungan P59417 Attorney at Law 503 South Jackson Street FL 2 Jackson MI 49203 (517) 783-3500
For Respondent Father:	INA R. O'BRIANT P60968 Attorney at Law PO BOX 197 Mason, MI 48854 (517) 333-0818
Guardian Ad Litem	PATRICIA J. WORTH P 43738 Attorney at Law 1401 West Michigan Ave Jackson MI 49202 (517) 780 4088
RECORDED BY:	SHANNON MCNALLY- Court Clerk
TRANSCRIBED BY:	SHELLIE R.SANDERS CER 7667 Certified Court Recorder (517) 788-4260

Sanders to do supervision of the visits for Blake Sanders. And now the only reason they are talking that they may discontinue it is because there was problems. Shirley is not going to get that same, that same chance? They don't know how Shirley is going to be as a supervisor. However, she has already acted as a supervisor in the past, and there were not any problems. They are saying that they don't -- Lauren said that Tammy has had problems with compliance, but she had every opportunity to say that Lance hasn't been in compliance, but she didn't. So I have to assume that he has been in compliance. You ordered back in November that there could be unsupervised parenting time or parenting time supervised by Shirley Bayling. Now Lauren doesn't recall that today, but you ordered it. From the very beginning you ordered parenting time for Lance with his mother, parenting time for Tammy with her mother. And they have allowed Tammy to have the supervised parenting time with her mother, but they don't -- they're -- they're preventing that with Shirley. The kids are losing here Judge, we have an infant and a toddler who are being deprived with a relationship with their parents by DHS because they don't have the resources, we're offering the resources. But it's one excuse after another. Judge, we would ask that the Court order that the children be placed with Shirley Bayling, and she be allowed to supervise the parenting time with Lance and Tammy. If

EXHIBIT E

In the Matter of ALEXANDER MITCHELL, NATHAN MITCHELL, and NICHOLAS MITCHELL, Minors. DEPARTMENT OF HUMAN SERVICES, Petitioner-Appellee, v WILLIAM MITCHELL, Respondent-Appellant.

No. 286895

COURT OF APPEALS OF MICHIGAN

2009 Mich. App. LEXIS 650

March 24, 2009, Decided

SUBSEQUENT HISTORY: Review pending at *Dep't of Human Servs. v. Mitchell (In re Mitchell), 768 N.W.2d 319, 2009 Mich. LEXIS 1593 (Mich., 2009)*
Reversed by, Remanded by, Motion granted by *Dep't of Human Servs. v. Mitchell (In re Mitchell), 2009 Mich. LEXIS 2398 (Mich., Oct. 23, 2009)*

PRIOR HISTORY: [*1]
Clinton Circuit Court. Family Division. LC No. 06-019136-NA.

JUDGES: Before: Jansen, P.J., and Borrello and Stephens, JJ.

OPINION

PER CURIAM.

Respondent appeals by right the family court's order terminating his parental rights to the minor children under *MCL 712A.19b(3)(c)(i), (g),* and *(j).* [1] We affirm.

1 It is unclear whether the family court also terminated respondent's parental rights pursuant to § 19b(3)(c)(ii). Nonetheless, we need not resolve this matter because only one statutory ground need be proven to support termination of parental rights. *In re McIntyre, 192 Mich App 47, 50; 480 NW2d 293 (1991).*

The family court did not clearly err by finding that §§ 19b(3)(c)(i) and (g) [2] had been proven by clear and convincing evidence. *MCR 3.977(J), In re Sours, 459 Mich 624, 633; 593 NW2d 520 (1999); In re Gazella, 264 Mich App 668, 672; 692 NW2d 708 (2005).*

2 We need not determine whether § 19b(3)(j) was proven by clear and convincing evidence because, as noted, only one statutory ground need be proven to support termination of parental rights. *In re McIntyre, 192 Mich App at 50.*

The conditions that led to adjudication were respondent's drinking problem, the fact that respondent had allowed a known sex offender [*2] to reside in the family home, the fact that the home was dirty and kept in poor condition, and respondent's neglect of the children. At the time of termination, respondent had remained sober for more than a year and the sex offender no longer resided with the family. However, although respondent had attended visitation with his children, he saw them only under supervised circumstances for a limited period

of time each week. Respondent had not requested additional visitation time or asked for permission to take any of the children unsupervised. Respondent did not know the names of the children's doctors, teachers, or therapists, and he did not take the initiative to inquire into his children's medical conditions, learning disabilities, and other needs.

More importantly, respondent had left his children and his home during the pendency of this case and moved in with his sister and brother-in-law, despite the fact that his sister lived more than 30 miles from where he worked. Respondent was subsequently asked to find housing that would be suitable for the children, but he claimed that he could not move because he needed to remain close to his sister and brother-in-law, because he did not [*3] want to move away from his support groups, and because his salary was insufficient to afford suitable arrangements. Accordingly, even though respondent complied with other services that were offered in this case, he did not comply with the requirement to have his own home for the children.

Respondent's financial difficulties also remained a concern. The family home had been sold because respondent became unable to sustain the mortgage payments. Respondent had the means to make a much better income than he earned during the pendency of this matter. Indeed, he had a degree in chemical engineering. However, according to his sister, respondent "did not want a big company to make millions of dollars on his idea while he would only get paid pennies." Because of this belief, respondent neglected to look for other work, thereby hampering his abilities to better support himself and his children.

While respondent did much of what was specifically asked of him by the agency, he had no motivation or initiative to go one step further. He was perfectly content doing the bare minimum in this case. We are left with the impression that respondent simply did not care about what happened to his children [*4] and that he was either too lazy or too disinterested to act as a concerned parent. Upon review of the record in this case, one cannot help but take note of respondent's overwhelmingly lackadaisical and indifferent attitude toward his children's wellbeing. The family court properly determined that serious and substantial concerns continued to exist with respect to respondent's housing situation, that respondent continued to neglect his children, and that these conditions would not likely be rectified within a reasonable time considering the children's ages. *MCL 712A.19b(3)(c)(i)*; *In re Trejo, 462 Mich 341, 359-360; 612 NW2d 407 (2000)* (holding that § 19b(3)(c)(i) was proven by clear and convincing evidence where the respondent had failed to obtain and maintain suitable housing for her children and had failed to offer a viable plan to do so in the future). The family court also properly determined that respondent had failed to provide proper care and custody for the children and that there was no reasonable expectation that he would do so within a reasonable time. *MCL 712A.19b(3)(g)*. Our conclusion in this regard is not changed by the fact that respondent loved his children and did not [*5] intend to be a neglectful parent. Subsection 19b(3)(g) applies "without regard to intent," and culpability or blameworthiness is therefore not required under the statute. See *In re Jacobs, 433 Mich 24, 37; 444 NW2d 789 (1989)*.

Once petitioner had established at least one statutory ground by clear and convincing evidence, the family court was required to terminate respondent's parental rights unless it appeared that termination would be clearly contrary to the children's best interests. *MCL 712A.19b(5)*. [3] The children in this case had special needs, including ADHD, and required supervision, routine, and structure. The two older boys were in special education, and the youngest boy had behavioral issues. As noted previously, respondent did not know the children's doctors, teachers, or therapists, and did not make any effort to do so. He did not take advantage of opportunities to spend additional time with his children, and there was no evidence that he would likely attend to his children's special needs in the foreseeable future. The family court did not err by finding that termination was not clearly contrary to the children's best interests. *MCR 3.977(J)*; *In re Gazella, 264 Mich App at 672*. [*6]

> 3 After respondent's parental rights were terminated, the statute was amended by 2008 PA 199. The statute now requires the family court to affirmatively find that termination is in the child's best interests before terminating parental rights.

Finally, respondent contends that he was denied the right to a fair and impartial judge. He asserts that the family court judge had already decided to terminate his parental rights before hearing all the evidence in this case. We disagree. In civil cases, due process generally requires notice of the nature of the proceedings, a

meaningful time and manner to be heard, and an impartial decision maker. *Cummings v Wayne Co, 210 Mich App 249, 253; 533 NW2d 13 (1995)*. The party claiming bias "must overcome a heavy presumption of judicial impartiality." *People v Wells, 238 Mich App 383, 391; 605 NW2d 374 (1999)*.

The family court utilized a form order published by the State Court Administrative Office. The order was dated "5/14/2008," and contained the printed phrase, "Child support obligations for William Mitchell shall be terminated effective 5/14/2008." Respondent contends that in ordering the termination of his child support obligations on May 14, 2008, [*7] the first day of the termination hearing, the family court must have already reached its decision to terminate his parental rights without hearing all the evidence.

This contention is speculative at best. We acknowledge that we do not know why the order would have been dated on the first day of the termination hearing. However, "[a]bsent actual personal bias or prejudice against either a party or the party's attorney, a judge will not be disqualified." *Id.* Other than the order itself, we find no evidence in the record to support respondent's claim that the court was biased against him. In fact, the court afforded the parties great leeway in taking their evidence and accommodating their witnesses, and the court's cogent and well-reasoned decision from the bench showed no signs of judicial prejudice. We conclude that respondent has failed to overcome the strong presumption of judicial impartiality in this case. *Id.*

Affirmed.

/s/ Kathleen Jansen

/s/ Stephen L. Borrello

DISSENT BY: STEPHENS

DISSENT

STEPHENS, J. (*dissenting*).

I would reverse and remand this case to the trial court. While I concur with my colleagues that the constitutional arguments are without merit, I am deeply concerned that the trial court's findings [*8] were tainted by impermissible considerations.

The trial court reached its holding based on *MCL 712A.19b(3)(c)(i), (c)(ii), (g),* and *(j)* after expressing concerns about respondent's fiscal integrity and his failure to obtain independent housing. The court addressed concerns about respondent's finances throughout its oral opinion. While the court found that respondent had a legal source of income throughout the proceedings, paid his child support and met his other obligations, the court improperly focused on the fact that respondent failed to meet the mortgage obligations on his former home. That home was originally purchased with the children's mother, from whom respondent was later estranged. The decision to purchase the home was based upon the belief that both parents would make economic contributions. Therefore, when the couple separated, the home was the subject of an orderly short sale. This is woefully common in Michigan in 2009. By partially basing its decision on this consideration, the court improperly concluded that this unfortunate, though common, occurrence is an indication that an individual is an unfit parent.

Similarly, the court was also critical of respondent's choice [*9] to work at Wal-Mart rather than seek employment as a chemical engineer. While one may speculate as to whether there are employment opportunities for inexperienced chemical engineers, the sole focus of the court should be whether respondent has any legal source of income, whether that income is adequate to care for the children and whether it will likely be used for that purpose. The fact that respondent could have potentially earned a greater income does not automatically indicate that his income was inadequate. Furthermore, there is no record of the DHS staff making any effort to find available resources to augment respondent's legal source of income with available public funds for his special needs children.

Intertwined with the court's concerns about respondent's finances was its criticism of respondent's choice to live with his sister and brother-in-law rather than obtain separate housing. Respondent's testimony that he relied upon his family, church and sobriety support groups to maintain his sobriety was unchallenged. By moving to a different location, respondent may have lost access to that important support structure. As the court noted, the extended family residence was stable [*10] and the children were welcome there. The only evidence in the record was that the home was safe, clean and had enough space for the children. The court discussed the

fact that respondent and his sister had crafted a detailed plan for the children at that home that included educational and medical support systems. The court erred in insisting that the nuclear family reside independently. As noted in *Moore v East Cleveland, 431 U.S. 494, 505; 97 S Ct 1932; 52 L ED 2d 531 (1977)*:

> "Out of choice, necessity, or a sense of family responsibility, it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home . . . Especially in times of adversity, such as the death of a spouse or economic need, the broader family has tended to come together for mutual sustenance and to maintain or rebuild a secure home life."

The observation in *Moore* is increasingly relevant during this time of economic turmoil. In considering respondent's living arrangement when determining if the statutory conditions were met, the court failed to recognize the value of respondent's broad family support.

Finally, the court, also based its finding on an alleged occurrence [*11] of physical assault against the eldest child. However, the consideration of this allegation was improper where it was not adequately supported by the record.

Because the court's decision was intertwined with the wrongful considerations noted above, I would reverse and remand to the trial court for a determination bereft of these inappropriate considerations.

/s/ Cynthia Diane Stephens

EXHIBIT F

J-38

STATE OF MICHIGAN

[redacted]

FAMILY DIVISION

REPORT AND RECOMMENDATION OF REFEREE

CASE NO. [redacted]
Petition No. [redacted]

IN THE MATTER OF: [redacted]

DOB: [redacted]

An adjudication hearing was held on April 28, 2009.

Present in Court on this date were:

[redacted]

May 12, 2009
Date of Hearing

[redacted]

Examined and approved:

Hon. Judy A. Hartsfield, Judge

DATE PREPARED: [redacted]

FINDINGS OF FACT

The Court finds by a preponderance of the evidence that the children come within the provisions of the Juvenile Code based upon the following:

- environmental neglect

The children are residents of [redacted]

[redacted] the mother, was present in court.

[redacted] the legal father of [redacted] and [redacted] was not present.

The children resided with their mother, [redacted] She admitted that on March 11, 2009 she left the children home alone. The children were discovered alone and taken to the police station by mother's boyfriend. [redacted] admitted that she tested positive for illegal drugs at the preliminary hearing.

Reasonable efforts were made to preserve and unify the family prior to the placement of the children in foster care; to prevent or eliminate the need for removing the children from the home; to preserve and unify the family to make it possible for the children to safely return home.

DISPOSITION

A dispositional hearing was held on May 12, 2009. Present in Court for Disposition on this date were [redacted]

The following is the Court ordered treatment plan for [redacted]

EVALUATIONS

- Clinic for Child Study

SUBSTANCE ABUSE

- submit weekly random drug/alcohol screens within 24 hours of request and under conditions as ordered by the Court

- mother to have substance abuse assessment.

COUNSELING/THERAPY

- parenting classes

PARENTING TIME

- weekly parenting time may be supervised by relative as Court ordered

OTHER

- attend to children's educational needs

The following is the Court ordered treatment plan for [redacted]

EVALUATIONS

- Clinic for Child Study

COUNSELING/THERAPY

- parenting classes

PARENTING TIME

- weekly parenting time may be supervised by relative as Court ordered

OTHER

- attend to children's educational needs

All parents are supposed to do the following:

- maintain suitable housing
- maintain a legal source of income
- fully cooperate with the Family Independence Agency
- attend all Court hearings

PLACEMENT

Placement/continuation of the children's residence in the parents home is contrary to the children's welfare.

The children are to be placed with a suitable relative or in foster care under the supervision of the Family Independence Agency.

Father submitted form which indicates that he established paternity for [redacted]

Agency to initially supervise some of mother's visits at the agency as there is some indication that mother's relationship with the custodian of the children - her mother- is strained.

The children are to be provided routine, non-surgical medical care or emergency medical and surgical treatment, dental care and other incidental items as required.

REIMBURSEMENT

The following parties are ordered to pay cost of care and/or child support to be determined by the Juvenile Reimbursement Unit: [redacted] Income withholding is authorized for said costs.

Attorney fees are ordered in the amount of $125.00 per hearing.

The parents are to successfully complete all elements of the treatment plan and benefit from all services provided. Services not funded by other financial sources are to be funded by the Family Independence Agency. Referrals for services are to be made timely and all reports from service providers made

available to the Court two business days before the hearing.

The next hearing is a dispositional review hearing scheduled for [redacted]

Appellate rights have been provided on the record.

EXHIBIT G

FOSTER CARE STRUCTURED DECISION MAKING
PARENT - AGENCY TREATMENT PLAN AND SERVICE AGREEMENT
Michigan Family Independence Agency

FC Case Number:	
FC Case Name:	[redacted]
FIA FC Worker Load #:	[redacted]
FIA FC Worker Name:	[redacted]
PS Case Number:	
PS Case Name:	[redacted]
Court ID #:	
POS Agency Name:	
POS Agency Worker Name:	

Date Completed: [redacted]

Check One:
- ☒ Initial Service Plan
- ☐ Updated Service Plan

This treatment plan is developed to assure that each child will receive safe and proper care and services by the following activities.

CHILD INFORMATION

FIA Case Number	Child Name	Permanency Planning Goal Code	Target Date	Anticipated Next Placement Type	Date Anticipated Next Placement
	[redacted]	8 = Return Home	[redacted]	[redacted]	

Member Referred Code:

BF =	Both Caretakers/Family	CX =	All Children	FT =	Female Caretaker
C =	Child Code (from above table)	FP =	Foster Parent	MT =	Male Caretaker
NX =	Noncustodial				
NY =	Noncustodial Father				
OT =	Other Member				

Service Type Code:

AD =	Alcohol or Drug Abuse Rehabilitation	FR =	Reunification Services	IL =	Independent Living Services
OT =	Other Program Needs	DC =	Day Care	FC =	Family Counseling/Outreach Counseling
JT =	Job Training/Employment Assistance	PS =	Parenting Skills Training	ED =	Education
HS =	Homemaker Services or Parent Aides	MH =	Mental Health Services	TH =	Individual/Group Therapy
DV =	Domestic Violence Program	MD =	Medical Service	WP=	Wrap Around

A. SERVICE REFERRAL TABLE

Using the codes above for member referred and service provider type, enter the information for all services below.

Member Referred Code	Family Member Name	Barriers/ Needs Addressed	Service Type Code	Service Provider Name	Mo/Yr Re-ferred	Mo/Yr Start	Target Com-pletion Date (Mo/Yr)	Service Status	Completed Services	Com-pletion Date (Mo/Yr)
FT	[redacted]	S2=Parenting Skills	PS=Parenting Skills Trng							
FT	[redacted]	S1=Emot. Stability	TH=Individual/Group Ther							
MT	[redacted]	S1=Emot. Stability	TH=Individual/Group Ther							
MT	[redacted]	S2=Parenting Skills	PS=Parenting Skills Trng							
MT	[redacted]	S12=Housing	OT=Other Program Needs							

Parent - Agency Treatment Plan and Service Agreement (continued)

B. Parent/Caretaker Goals and Objectives

Parent Agency Agreement as to the mother, [redacted]

1. [redacted] will address her substance abuse issues, if identified as a need.
   - [redacted] will participate in a CARE assessment and follow the recommendation of the assessor.
   - [redacted] will participate in a substance abuse treatment program and provide this worker with documentation of successful participation and completion.
   - [redacted] will participate in substance abuse counseling and NA/AA to sustain sobriety.
   - [redacted] will participate in random drug screens.
2. [redacted] will attend parenting classes.
   - [redacted] will participate in, benefit from and successful complete parenting classes.
   - [redacted] will learn age appropriate discipline procedures.
   - [redacted] will provide a Certificate of Completion.
   - [redacted] will demonstrate appropriate parenting skills during visits
3. [redacted] will attend individual therapy.
   - [redacted] will engage in and benefit from therapeutic services.
   - [redacted] will be open and honest with the therapist.
   - [redacted] will address the issues of sexual abuse, parental responsibilities and the safety of the children.
   - [redacted] will attend and be prompt to all scheduled sessions.
   - [redacted] where possible, will notify the therapist within 24 hours of a cancellation.
4. [redacted] will participate in a psychological evaluation.
   - [redacted] will engage in a psychological assessment with honesty.
   - [redacted] will follow the recommendations of the assessor.
5. [redacted] will attend scheduled visitation.
   - [redacted] will be prompt in attendance to the weekly scheduled visitation and give the placement or Agency 24 hour notice of cancellation, where possible.
   - [redacted] will interact appropriately at the visits, using skills learned in parenting classes.
   - [redacted] will follow all rules set for visitation.
6. [redacted] will maintain suitable housing.
   - [redacted] will maintain a safe, stable and nurturing living environment free of sexual, physical and verbal abuse.
   - If [redacted] is no longer living at the address on file at DHS, this worker must be notified within 48 hours.
   - [redacted] will provide the child with appropriate and safe supervision.
   - [redacted] will provide this worker with documentation of a lease in her name and monthly documentation that the rent and utilities are current.
7. [redacted] will maintain a legal source of income.
   - [redacted] will maintain employment.
   - [redacted] s income from employment must be sufficient enough to support the needs of the family and provide the worker with documentation on a monthly basis.
   - [redacted] will provide DHS with documentation from a legal source(s) of income, if not employed. This income must be sufficient enough to maintain the family.
8. [redacted] will maintain a lifestyle in cooperation with this agency and its courts.
   - [redacted] will not engage in illegal activities that would prevent reunification.
   - [redacted] will abide by the rules set by that court in any criminal matter.

- [redacted] will immediately notify DHS of any criminal involvement or incarcerations.

9. [redacted] will maintain contact with this worker/POS Agency worker.
   - [redacted] will contact this worker at least once a month with updates of any progress or questions she may have concerning the Parent Agency Agreement.
10. [redacted] will sign releases of information to the Department of Human Services.
    - [redacted] will allow referred services providers to provide verification of all services and programs completed or participating in, so that she may receive credit for participation.

Parent Agency Agreement as to the father, [redacted]:

1. [redacted] will address his substance abuse issues, if identified as a need.
   - [redacted] will participate in a CARE assessment and follow the recommendation of the assessor.
   - [redacted] will participate in a substance abuse treatment program and provide this worker with documentation of successful participation and completion.
   - [redacted] will participate in substance abuse counseling and NA/AA to sustain sobriety.
   - [redacted] will participate in random drug screens.
2. [redacted] will attend parenting classes.
   - [redacted] will participate in, benefit from and successful complete parenting classes.
   - [redacted] will learn age appropriate discipline procedures.
   - [redacted] will provide a Certificate of Completion.
   - [redacted] will demonstrate appropriate parenting skills during visits.
3. [redacted] will attend individual therapy.
   - [redacted] will engage in and benefit from therapeutic services.
   - [redacted] will be open and honest with the therapist.
   - [redacted] will address the issues of sexual abuse, parental responsibilities and the safety of the children.
   - [redacted] will attend and be prompt to all scheduled sessions.
   - [redacted], where possible, will notify the therapist within 24 hours of a cancellation.
4. [redacted] will participate in a psychological evaluation.
   - [redacted] will engage in a psychological assessment with honesty.
   - [redacted] will follow the recommendations of the assessor.
5. [redacted] will attend scheduled visitation.
   - [redacted] will be prompt in attendance to the weekly scheduled visitation and give the placement or Agency 24 hour notice of cancellation, where possible.
   - [redacted] will interact appropriately at the visits, using skills learned in parenting classes.
   - [redacted] will follow all rules set for visitation.
6. [redacted] will maintain suitable housing.
   - [redacted] will maintain a safe, stable and nurturing living environment free of sexual, physical and verbal abuse.
   - If [redacted] is no longer living at the address on file at DHS, this worker must be notified within 48 hours.
   - [redacted] will provide the child with appropriate and safe supervision.
   - [redacted] will provide this worker with documentation of a lease in his name and monthly documentation that the rent and utilities are current.
7. [redacted] will maintain a legal source of income.
   - [redacted] will maintain employment.
   - [redacted] income from employment must be sufficient enough to support the needs of the family and provide the worker with documentation on a monthly basis.

- [redacted] will provide DHS with documentation from a legal source(s) of income, if not employed. This income must be sufficient enough to maintain the family.

8. [redacted] will maintain a lifestyle in cooperation with this agency and its courts.
   - [redacted] will not engage in illegal activities that would prevent reunification.
   - [redacted] will abide by the rules set by that court in any criminal matter.
   - [redacted] will immediately notify DHS of any criminal involvement or incarcerations.
9. [redacted] will maintain contact with this worker/POS Agency worker.
   - [redacted] will contact this worker at least once a month with updates of any progress or questions she may have concerning the Parent Agency Agreement.
10. [redacted] will sign releases of information to the Department of Human Services.
    - [redacted] will allow referred services providers to provide verification of all services and programs completed or participating in, so that she may receive credit for participation.

C. Foster Parent/Kinship Caregiver Activities and Discipline and Child Handling Techniques

1. The placement is expected to maintain a safe, stable, nurturing environment for the children.
   - The living environment should be free of any hazards. All pet animals that are aggressive should not come into contact with the child. All hazardous household items should not be accessible to the child.
   - The living environment should be void of sexual, physical and emotional abuse.
   - The placement is expected to provide appropriate supervision.
2. The placement is expected to provide transportation.
   - The placement will provide transportation to all therapy appointments.
   - The placement will provide transportation to all visits.
   - The placement will provide transportation as needed to school and activities, etc.
3. The placement is expected to meet the medical needs of the child.
   - The placement is expected to seek necessary medical attention and inform the worker of illness. The placement is expected to follow the directives of the medical professional.
   - The placement is expected to follow recommended prescribed medication(s).
   - The placement is expected to notify the Agency immediately of any conditions requiring emergency treatment and hospital stay.
4. The placement is expected to follow the court order regarding visitation.
   - The placement is expected to follow the schedule for visitation set by the Agency.
   - The placement is expected to give the Agency a 24 hour notice, if there is a need to cancel a scheduled visit.
5. The placement is expected to follow the DHS policy for discipline, no corporal punishment and maintain confidentiality.
   - The placement is expected to use discipline procedures such as; age appropriate time outs, suspension of activities, extra chores, but no physical punishment or suspension of food.
   - The placement is expected not to disclose information pertaining to this case to unauthorized parties.

D. Individual Child Activities

1. The children will abide by the rules of placement.
   - The child will follow bedtime schedules.
   - The child will interact appropriately with other children and adults in the home.
   - The child will bathe daily and maintain proper hygiene.
2. The children will participate in medical attention as needed.
   - The child will inform the placement when he/she feels ill.
   - The child will allow placement to seek medical attention when needed.
   - The child will follow the recommended dosages of medications.
3. The children will participate in therapy as needed.
   - The child will be open and honest in communicating with the therapist.
   - The child will participate in further evaluations as needed.
4. The children will attend school.
   - The child will attend school on all scheduled days.
   - The child will participate in the daily activities in the classroom.
   - The child will do all class work and homework required, to the best of his ability.

E. Foster Care Worker Activities

- The worker will insure that the child receives all of the necessary care and protection.
- This worker will monitor the child on a regular basis and this includes at least monthly home visits and the provision of any needed services.
- The worker will assist the parent in completing the required activities of the PAA, through any necessary referrals.

F. Parenting Time

The natural parent will have supervised weekly visits at the DHS Office or its designee.

- The parent is expected to follow all the rules of visitation.
- The parent is expected to be prompt to all scheduled visits and contact the DHS or the placement when visitation is not possible.
- All conversations and activities with the children are expected to be appropriate not upsetting to the child. (i.e., inappropriate conversation; whispering in the visits so that the supervision cannot hear, telling the child what date they will be coming home, I'm going to get you out, they can't keep you here, you don't have to do what they say, placing blame for the child being in care on the child.)
- The parent cannot attend any visitations under the influence of substances not prescribed by their medical doctor specific to their illness.

The development of this plan was negotiated with (also list those individuals who were unavailable to participate in the development and why not):

[redacted]

By signing below I agree that I have read the above, discussed it with my foster care worker, and understand what is expected of me to facilitate the permanency planning goal.

Parent/Caretaker Name: [redacted]

Parent/Caretaker Signature: _____ **Date:** _____

Parent/Caretaker Name: [redacted]

Parent/Caretaker Signature: _____ Date: _____

By signing below on behalf of the Family Independence Agency we agree to those activities outlined above and will assist the family in their efforts to facilitate the Permanency Planning goal.

Name and Title: [redacted]

Signature: [redacted] Date: 4/15/10

Distribution of Plan:

FIA Local Office Name: [redacted]

FIA Local Office Approval:

Name and Title: [redacted]

Signature: [redacted] Date: 4/15/10

The Family Independence Agency will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to an FIA office in your county.	AUTHORITY: P.A. 280 of 1939. RESPONSE: Voluntary. PENALTY: None

EXHIBIT H

1 of 1 DOCUMENT

In the Matter of D. N. MOORE and J. MOORE, Minors.

No. 298008

COURT OF APPEALS OF MICHIGAN

2010 Mich. App. LEXIS 2535

December 28, 2010, Decided

SUBSEQUENT HISTORY: Leave to appeal denied by, Motion granted by *In re Moore, 2011 Mich. LEXIS 443 (Mich., Mar. 23, 2011)*

PRIOR HISTORY: [*1]
Macomb Circuit Court. Family Division. LC No. 2010-000200-NA.

JUDGES: Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

OPINION

PER CURIAM.

Respondent-mother appeals as of right from a circuit court order adjudicating the minor children temporary wards of the court pursuant to their father's no-contest plea to a petition requesting that the court exercise jurisdiction over the children pursuant to *MCL 712A.2(b)*. We affirm. This appeal has been decided without oral argument pursuant to *MCR 7.214(E)*.

After the trial court authorized the petition, respondent requested a jury trial on the issue of jurisdiction. At the pretrial hearing, however, the children's father offered a no-contest plea, *MCR 3.971*, pursuant to which the court exercised jurisdiction over the children. Respondent contends that the trial court violated her statutory and constitutional rights by depriving her of custody of her children without a separate hearing.

Initially, we observe that respondent did not preserve this issue by objecting to the trial court's failure to conduct a separate adjudicatory hearing with respect to the allegations against her. See *Miller-Davis Co v Ahrens Constr, Inc, 285 Mich App 289, 298; 777 NW2d 437 (2009)*. [*2] When an issue is unpreserved, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust, 274 Mich App 283, 285; 731 NW2d 810 (2007)*.

MCL 712A.2(b) grants a court jurisdiction over a child under 18 years of age if the child's parent is neglectful as defined in § 2(b)(1), or has failed to provide a fit home as defined in § 2(b)(2). *In re AMB, 248 Mich App 144, 167; 640 NW2d 262 (2001)*. Generally, the determination whether allegations in a petition are true, thus allowing the court to exercise jurisdiction, is made from the respondent's admissions to the allegations in the petition, from evidence providing a factual basis for the assumption of jurisdiction if the respondent pleads no contest, or from evidence introduced at a trial if the respondent contests jurisdiction. *MCR 3.971*; *MCR 3.972*; *MCR 3.973(A)*; *In re PAP, 247 Mich App 148, 152-153;*

640 NW2d 880 (2001). The court rules provide a right to a trial on the allegations in the petition. *MCR 3.965(B)(6)*; *MCR 3.972*. The law further provides a right to a jury at the trial. *MCL 712A.17(2)*; *MCR 3.911(A)*. Once jurisdiction is obtained, the case proceeds to disposition [*3] to determine what is to be done with the child. *MCL 712A.18*; *MCR 3.973*. But because the court's jurisdiction is "tied to the children," the petitioner is not required to "sustain the burden of proof at an adjudication with respect to every parent of the children involved in a protective proceeding before the family court can act in its dispositional capacity." *In re CR, 250 Mich App 185, 205; 646 NW2d 506 (2002)*. Once a court acquires jurisdiction by virtue of one parent's plea or trial, it can enter an order of disposition against both parents, regardless of the evidence against the other parent. *Id. at 202-203*. Thus, as long as the allegations against the parent who entered the plea indicate that he or she "committed an act or omission that would bring the children within the jurisdiction of the court" under § 2(b), *In re SLH, 277 Mich App 662, 670; 747 NW2d 547 (2008)*, "[t]he court need not separately ascertain whether it has jurisdiction over each parent." *In re LE, 278 Mich App 1, 17; 747 NW2d 883 (2008)*.

In this case, the trial court acquired jurisdiction over the children pursuant to the father's plea. Respondent was not entitled to a separate adjudication. Accordingly, there [*4] was no plain error.

Affirmed.

/s/ Pat M. Donofrio

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald

EXHIBIT I

Prevention and Training Services, Inc.
4601 W. Saginaw
Suite C
Lansing, MI 48917
USA

Voice: 517-323-8149
Fax: 517-323-1653

Invoice

Invoice Number:
523

Invoice Date:
Feb 1, 2013

Page:
1

Sold To:
3490 BELLE WAY #50
LANSING, MI 48911
INGHAM

Ship to:

Customer ID	Customer PO	Payment Terms	
LEGAL AID OF S.C.MI		2% 10, Net 30 Days	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
	Airborne		3/3/13

Quantity	Item	Description	Unit Price	Extension
1.00	Substance Assessment	Substance Abuse Assessment 1-9-13	145.00	145.00

Subtotal	145.00
Sales Tax	
Total Invoice Amount	145.00
Payment/Credit Applied	
TOTAL	145.00

Check/Credit Memo No:

EXHIBIT J

EAST LANSING
OFFICE - 517-332-3804
FAX - 517-332-3805

SOUTH LANSING /LANSING
OFFICE - 517-267-8830
FAX - 517-267-8831 ☐

WATERFORD
OFFICE - 248-758-1472
FAX - 248-758-1474 ☐

ADAM
Alcohol Drug Administrative Monitoring, Inc.

Clients File at Please X

LIVONIA
☐ OFFICE - 248-471-7227
FAX - 248-471-7228

CANTON
☐ OFFICE - 734-844-2077
FAX - 734-844-2078

JACKSON
☐ OFFICE - 517-787-5571
FAX - 517-787-5572

TEST REPORT

Name: [redacted] [redacted], DOB: [redacted], Case #_____
Last name First name

I hereby authorize ADAM, Inc. reporting center to release information to the referring agent/agency listed below. I am consenting to this release of information and that it shall expire *after one year.*

Referring Agent: Brandon M. Scott Agency: Attorney

Client Signature: [redacted] Date: 2-15-2013

Amt. Paid $ 20 File Letter 1x

Test results were as follows:

Date	Time	PBT Results	U / A Results *	To Lab	Lab Results	Staff Initials
2-15-13	5:08p	—	THC Positive, All Others Negative	NO		RH/p

RX _____

Additional Comments: _____

☒ Monitored Collection ☑ Result Entered / Paracelsus

Staff Signature: _____

*5 Panel = Cocaine, Marijuana, Opiate, Methamphetamine, Benzodiazepines.

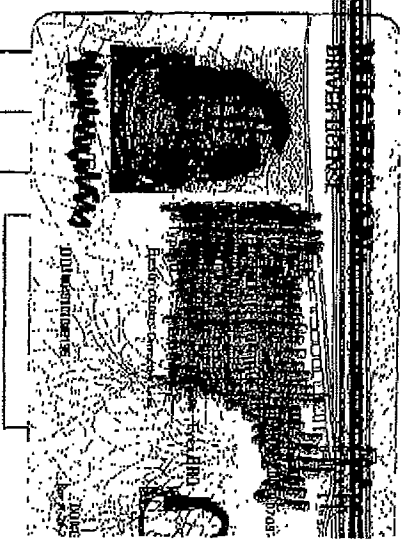

EXHIBIT K

STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

LANCE LAIRD,

V File: 112828NA

TAMMY SANDERS

Defendant.

_____/

ADJUDICATION HEARING

BEFORE THE HONORABLE RICHARD N. LAFLAMME, CIRCUIT COURT JUDGE

Jackson, Michigan - Tuesday February 7, 2012

APPEARANCES:

For the People:	MARY K. HANNA-REZMIERSKI P51926 Asst. Prosecutor 312 South Jackson Street Jackson, MI 49201 (517) 788-4283
For Respondent Mother:	Shelley M. Dungan P59417 Attorney at Law 503 South Jackson Street FL 2 Jackson MI 49203 (517) 783-3500
For Respondent Father:	INA R. O'BRIANT P60968 Attorney at Law PO BOX 197 Mason, MI 48854 (517) 333-0818
Guardian Ad Litem	PATRICIA J. WORTH P 43738 Attorney at Law 1401 West Michigan Ave Jackson MI 49202 (517) 780 4088
RECORDED BY:	SHANNON MCNALLY- Court Clerk
TRANSCRIBED BY:	SHELLIE R.SANDERS CER 7667 Certified Court Recorder (517) 788-4260

Jackson, Michigan

Tuesday February 7, 2012 -10:51 a.m.

THE COURT: Sanders/Laird minors, file 112828. May I speak with -- hello, yes, this is Judge LaFlamme calling from Jackson, Michigan. I'm trying to reach Rachel Joy. Thank you.

MS. JOY: Good morning, this is Rachel Joy.

THE COURT: Good morning, this is Judge LaFlamme; we are on the record in the matter of the Sanders/Laird children for a matter scheduled for trial this morning. Can I have everyone state their appearances please? THE COURT: Sanders/Laird minors, file 112828.

(At 10:36 a.m., calling party)

THE COURT: Please state your appearances. Good morning Ms. Joy we are on the record in reference Sanders/ Laird children. This matter is scheduled for trial this morning.

MS. REZMIERSKI: Kathleen Rezmierski on behalf of the People and DHS, thank you.

MR. JONES: Rashad Jones, Department of Human Services.

MS. O'BRIANT: Attorney Ina O'Briant on behalf of respondent father Lance Laird who is present in the courtroom and seated to my right.

MR. LAIRD: Lance Laid, father.

STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

LANCE LAIRD,

V File: 112828NA

TAMMY SANDERS

Defendant.
_____/

ADJUDICATION HEARING

BEFORE THE HONORABLE RICHARD N. LAFLAMME, CIRCUIT COURT JUDGE

Jackson, Michigan - Tuesday February 22, 2012

APPEARANCES:

For the People:	MARY K. HANNA-REZMIERSKI P51926 Asst. Prosecutor 312 South Jackson Street Jackson, MI 49201 (517) 788-4283
For Respondent Mother:	Shelley M. Dungan P59417 Attorney at Law 503 South Jackson Street FL 2 Jackson MI 49203 (517) 783-3500
For Respondent Father:	INA R. O'BRIANT P60968 Attorney at Law PO BOX 197 Mason, MI 48854 (517) 333-0818
Guardian Ad Litem	PATRICIA J. WORTH P 43738 Attorney at Law 1401 West Michigan Ave Jackson MI 49202 (517) 780 4088
RECORDED BY:	SHANNON MCNALLY- Court Clerk
TRANSCRIBED BY:	SHELLIE R.SANDERS CER 7667 Certified Court Recorder (517) 788-4260

record, although we're still waiting for the prosecutor to come back in court so if you could just sit tight.

MS. JOY: Okay. I'm going to put you on speaker phone, and I need to go clock back in from my lunch break and I will be ready.

THE COURT: Okay.

MS. JOY: All right. Thank you.

THE COURT: Okay. Can everyone state their appearances please?

MS. REZMIERSKI Kathleen Rezmierski on behalf of the department.

MS. OLVER: Lauren Olver, DHS foster care worker.

MS. O'BRIANT: Attorney Ina O'Briant on behalf of respondent father Lance Laird.

MR. LAIRD: Lance Laird, father.

MS. SANDERS: Tammy Sanders, mother.

MS. DUNGAN: Shelly Dungan, attorney for respondent mother.

MS. WORTH: Patricia Worth, LGAL.

THE COURT: When we were last here the Court held a placement hearing and took testimony, heard arguments, but delayed making a decision pending some input from the Larsen Bay Tribe. I have received a tribal position regarding placement. Has everyone else had a chance to -- got a copy of that and had a chance to receive it or review it rather?

STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

V File: 112828NA
LANCE LAIRD
TAMMY SANDERS
Defendant.
_____/

DISPOSITIONAL REVIEW

BEFORE THE HONORABLE RICHARD N. LAFLAMME, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday April 18, 2012

APPEARANCES:

For the People:	MARY K. HANNA-REZMIERSKI P51926 Asst. Prosecutor 312 South Jackson Street Jackson, MI 49201 (517) 788-4283
For Respondent Mother:	IVAN D. BROWN P47645 Attorney at Law 1339 Horton Rd Jackson MI 49203 (517) 782-6800
For Respondent Father:	INA R. O'BRIANT P60968 Attorney at Law PO BOX 197 Mason, MI 48854 (517) 333-0818
Guardian Ad Litem	PATRICIA J. WORTH P 43738 Attorney at Law 1401 West Michigan Ave Jackson MI 49202 (517) 780 4088
RECORDED BY:	SHANNON MCNALLY- Court Clerk
TRANSCRIBED BY:	SHELLIE R.SANDERS CER 7667 Certified Court Recorder (517) 788-4260

Jackson, Michigan

Wednesday April 18, 2012 - 4:36 p.m.

(At 4:36 p.m., phone conference initiated)

MS. JOY: Hello, this is Rachelle.

THE COURT: Rachelle, this is Judge LaFlamme, I am calling in the matter of the Sanders/ Laird children from Jackson Michigan.

MS. JOY: Yes.

THE COURT: Okay. Can I have everyone else state their appearances, please?

MS. REZMIERSKI: Kathleen Rezmierski.

MS. OLVER: Oh, I'm sorry; she asked me a quick question. Lauren Olver DHS Foster Care worker.

MS. REZMIERSKI: I will try to be quiet, Judge.

MR. BROWN: Ivan Brown, attorney for mother.

MS. SANDERS: Tammy Sanders, mother.

MS. O'BRIANT: Attorney Ina O'Briant on behalf of respondent father.

MR. LAIRD: Father, Lance Laird.

MS. WORTH: Lawyer, Guardian Ad Litem.

THE COURT: So Ms. Joy, are you able to hear everyone.

MS. JOY: It is hard to hear some of the parties, but I -- I am listening as closely as possible. So if they can speak up it would be helpful.

STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

IN THE MATTER OF ,

V File: 112820NA

SANDERS / LAIRD MINORS

Defendant.

_____/

DISPOSITIONAL REVIEW

BEFORE THE HONORABLE RICHARD N. LAFLAMME, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday May 2, 2012

APPEARANCES:

For the People:	MARY K. HANNA-REZMIERSKI P51926 Asst. Prosecutor 312 South Jackson Street Jackson, MI 49201 (517) 788-4283
For Respondent Mother:	IVAN D. BROWN P47645 Attorney at Law 1339 Horton Rd Jackson MI 49203 (517) 782-6800
For Respondent Father:	INA R. O'BRIANT P60968 Attorney at Law PO BOX 197 Mason, MI 48854 (517) 333-0818
Guardian Ad Litem	PATRICIA J. WORTH P 43738 Attorney at Law 1401 West Michigan Ave Jackson MI 49202 (517) 780 4088
RECORDED BY:	SHANNON MCNALLY- Court Clerk
TRANSCRIBED BY:	SHELLIE R.SANDERS CER 7667 Certified Court Recorder (517) 788-4260

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Jackson, MI

Wednesday May 2, 2012 - 4:02 p.m.

THE COURT: Sanders, Laird Minors file 112828. Please state your appearances.

MS. REZMIERSKI: Kathleen Rezmierski.

MS. OLVER: Lauren Olver.

MR. BROWN: Ivan Brown appearing for Ms. Sanders.

MS. SANDERS: Tammy Sanders, mother.

MS. O'BRIANT: Ina O'Briant on behalf of Lance Laird, non respondent father.

MR. LAIRD: Lance Laird father.

MS. WORTH: Patricia Worth, lawyer, guardian ad litem.

MS. OLVER: Do we have a — a telephone conference for this one?

THE COURT: Do we?

MS. O'BRIANT: Yeah, Rachelle Joy.

MS. OLVER: She —

THE COURT: Oh, that's right I'm sorry I should remember that.

MS. OLVER: She is traveling today, so her coworker Cassie Hickey will be answering the phone and taking notes. She can't make any judgments, but she will have to go to the tribe with anything that is said today.

THE COURT: Cassie's last name again?

MS. OLVER: Hickey.

THE COURT: Can you spell that?

MS. OLVER: I believe it's H-i-c-k-e-y.

THE COURT: At the same number we've been calling?

MS. OLVER: Yes, the same number.

THE COURT: Well let me find that. I am not finding the letter I used whenever I called her. Do you have that?

MS. OLVER: Yes, let me get that.

THE COURT: I've got it. I've got a cell phone and an officer number. Should I call the office number?

MS. OLVER: Let me see what number I called, sorry. I just want to be sure, its 907-486-9869.

THE COURT: 9869.

(At 4:04 p.m. conference call started)

UNKNOWN FEMALE: This is Cassie.

THE COURT: Cassie Hickey?

UNKNOWN FEMALE: Yes, that's me.

THE COURT: Can I get the spelling of your name?

MS. HICKEY: C-a-s-s-i-e H-i-c-k-e-y.

THE COURT: Okay, well I had it right. This is Judge LaFlamme; we are on the record in Jackson Michigan in the Matter of the Sanders and Laird children.

MS. HICKEY: Okay.

THE COURT: All right. Can I have everyone else

STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

IN THE MATTER OF,

V File: 112828NA

SANDERS / LAIRD MINORS

Defendant.

_____/

DISPOSITIONAL REVIEW

BEFORE THE HONORABLE RICHARD N. LAFLAMME, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday August 22, 2012

APPEARANCES:

For the People:	MARY K. HANNA-REZMIERSKI P51926 Asst. Prosecutor 312 South Jackson Street Jackson, MI 49201 (517) 788-4283
For Respondent Mother:	IVAN D. BROWN P47645 Attorney at Law 1339 Horton Rd Jackson MI 49203 (517) 782-6800
For Respondent Father:	INA R. O'BRIANT P60968 Attorney at Law PO BOX 197 Mason, MI 48854 (517) 333-0818
Guardian Ad Litem	PATRICIA J. WORTH P 43738 Attorney at Law 1401 West Michigan Ave Jackson MI 49202 (517) 780 4088
RECORDED BY:	SHANNON MCNALLY- Court Clerk
TRANSCRIBED BY:	SHELLIE R.SANDERS CER 7667 Certified Court Recorder (517) 788-4260

Jackson, MI

Wednesday August 22, 2012 - 3:34 p.m.

COURT OFFICER WHEATON: Hello.

THE COURT: We are on the record in reference to the Sanders/ Laird Children.

UNIDENTIFIED FEMALE: Hello, this is Rochelle.

THE COURT: Rochelle this Judge LaFlamme you're on the record in the Matter of the Sanders / Laird children. Can you hear me okay?

MS. JOY: Yes, your Honor.

THE COURT: Can I have everyone else state their appearances, please?

MS. REZMIERSKI: Kathleen Rezmierski, on behalf of the department and the People.

MS. OLVER: Lauren Olver, DHS Foster care worker.

MR. BROWN: Ivan Brown appearing for mom, Ms. Sanders.

MS. SANDERS: Tammy Sanders, mother.

MS. O'BRIANT: Ina O'Briant attorney for father, Lance Laird.

MR. LAIRD: Lance Laird, father.

MS. WORTH: Patricia Worth, lawyer, guardian ad litem.

THE COURT: All right I have an updated foster care report from Ms. Olver dated August sixteenth, twenty

STATE OF MICHIGAN

IN THE 4th CIRCUIT COURT FOR THE COUNTY OF JACKSON

IN THE MATTER OF BLAKE SANDERS,
PRESTON SANDERS, CAMERON SANDERS,

Case No: 11-002828 (01-03)-NA
/

MOTION FOR IMMEDIATE PLACEMENT

BEFORE THE HONORABLE RICHARD LAFLAMME, CIRCUIT JUDGE

Jackson, Michigan - Wednesday, September 5, 2012

APPEARANCES:

For the State/DHS	KATHLEEN REZMIERSKI(P-35496) Assistant Prosecuting Attorney Jackson County, Michigan 312 South Jackson Street Jackson, Michigan 49201 (517) 788-4283
For Respondent Father:	INA R. O'BRIANT (P-60968) Law Offices of Ina R. O'Briant 200 Woodland Pass, Suite 1-A East Lansing, Michigan 48823 (517) 333-0818
Guardian Ad Litem:	PATRICIA J. WORTH (P-43738) 1401 West Michigan Avenue Jackson, Michigan 49202 (517) 780-4088
For Respondent Mother:	IVAN D. BROWN (P-47645) Brown, Raduazo & Hilderley, PLLC 1339 Horton Road Jackson, Michigan 49203
VIA TELEPHONE: For Larsen Bay Indian Tribe:	RACHELLE JOY Post Office Box 50 Larsen Bay, Alaska 99624 (907) 847-2297

appearances please?

MS. REZMIERSKI: Kathleen Rezmierski on behalf of the Department and the People.

MS. ERNST: Sharon Ernst on behalf of Department of Human Services.

MR. BROWN: Ivan Brown, attorney for Ms. Sanders.

MS. SANDERS: Tammy Sanders, mother.

MS. O'BRIANT: Ina O'Briant, attorney for Lance Laird.

MR. LAIRD: Lance Laird, father.

MS. WORTH: Patricia Worth, Lawyer, Guardian Ad Litem.

THE COURT: Okay, we are on the record to address two issues this afternoon. One is the new petition that was filed relating to Bianca Laird and the other is to hear arguments on Ms. O'Briant's motion on behalf of Mr. Laird for immediate placement of the children. So, let's address the new petition first. As I understand it, the current situation is Bianca is with the mother. But I believe the petition and I believe the position, the petitioner, the position of the Tribe asks that Bianca be removed from her mother and placed with the two siblings. Do I have that correct?

MS. REZMIERSKI: I believe that's correct in

EXHIBIT L

1 of 1 DOCUMENT

In the Matter of BRATCHER, Minors.

No. 295727

COURT OF APPEALS OF MICHIGAN

2010 Mich. App. LEXIS 1487

July 29, 2010, Decided

SUBSEQUENT HISTORY: Motion granted by, Leave to appeal denied by *In re Bratcher, 2010 Mich. LEXIS 2463 (Mich., Dec. 10, 2010)*

PRIOR HISTORY: [*1]

Allegan Circuit Court. Family Division. LC No. 09-044959-NA.

JUDGES: Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

OPINION

PER CURIAM.

In this child protective proceeding, respondent mother appeals as of right the trial court's initial dispositional order, entered after the court exercised jurisdiction over the minor children under *MCL 712A.2(b)(1)* and *(2)*, following respondent father's plea of admission to allegations in an amended petition. We affirm.

On April 30, 2009, petitioner filed a petition arising out of inappropriate sexual activity occurring between the two of the children. [1] This initial petition alleged, in large part: that respondent mother became aware of this activity, in November 2006; that within a year of that disclosure, respondent mother permitted respondents' minor son and minor daughter to be alone together, unsupervised; that in February 2009, respondent mother became aware that inappropriate sexual activity was again occurring between the children; that respondent mother did not report the activity to law enforcement and that she had not been cooperative in scheduling a medical examination or counseling for respondents' minor daughter; and that the minor daughter had indicated [*2] on more than one occasion that she could not fully disclose what had transpired or her brother would be "taken away to live with another family." [2] The only mention of respondent father in the initial petition was the assertion that he was "not involved in" the children's lives. [3]

1 These allegations concern activities between respondents' middle two children, who shall be referred to as the parties' minor son and minor daughter in this opinion.

2 Respondents' minor son was the subject of delinquency proceedings as a result of the inappropriate conduct underlying this action. Those proceedings are not at issue here.

3 Respondents are divorced and each has remarried. At the time of the events in question, respondent mother resided in Allegan County,

Michigan, while respondent father resided in Indiana.

A preliminary inquiry was held on May 7, 2009, to determine whether there was sufficient information to authorize the filing of the petition. [4] Respondent mother was present and was represented by counsel. Respondent father was also present. At the conclusion of the hearing, the trial court authorized the filing of the petition, left the children in respondent mother's custody, allowed respondent [*3] father parenting time consistent with the terms set by the parties' prior divorce proceedings, and ordered that respondents' minor son and minor daughter "shall have no unsupervised contact with each other" and that respondents' minor daughter "shall have a medical examination." The trial court's order authorizing the petition further indicated that appropriate notice of the hearing was provided as required by law and that a probable cause determination was waived by all parties present. Respondent father was granted appointed counsel to represent him in the proceedings, and an attorney/guardian ad litem was appointed for the children. Additionally, on that same date, notice of the instant child protective proceedings was provided to the Ottawa Circuit Court, which had continuing jurisdiction over the child arising from the parties' divorce proceedings.

4 A preliminary inquiry is an informal review. *MCR 3.903(A)(22)*. Where there is no request for placement of a child and the child is not already in temporary custody, the purpose of a preliminary inquiry is "to determine action to be taken on a petition." *MCR 3.962(A)*. The court may deny the petition, refer the matter for alternative [*4] services, or authorize the filing of the petition. *MCR 3.962(B)(3)*. "Granting permission to file the petition is merely a determination that the petition is sufficient to be 'delivered to, and accepted by, the clerk of the court.'" *In re Kyle, 480 Mich 1151; 746 NW2d 302 (2008)*, quoting *MCR 3.903(A)(20)*. Here, while a preliminary inquiry was conducted, the hearing also included aspects of a formal preliminary hearing, such as respondent mother's appearance and waiver of a probable cause hearing. See *MCR 3.965(B)(11)*.

On June 30, 2009, petitioner filed a motion to review placement, on the basis that respondent-mother was only "minimally cooperative" with services, had prevented case workers from conducting appropriate home visits and interviews of the children and had not yet scheduled a medical examination or counseling services for her daughter. A pretrial conference was held on July 27, 2009, and in lieu of a hearing on that motion, respondents agreed to sign releases relating to privately obtained medical examinations and counseling for the children, and respondent mother agreed to permit petitioner to meet with the children monthly and to allow a CASA volunteer to meet with the [*5] children weekly. On that same date, each party was issued a summons for the jury trial scheduled for October 27, 2009.

On September 2, 2009, petitioner filed an emergency motion to remove the children from respondent mother's home after the minor children were observed together unsupervised. Petitioner alleged, additionally, that respondent mother remained "not fully compliant" or cooperative. After hearing testimony, the trial court determined that unsupervised contact had occurred, which placed the children at risk of emotional and physical harm. The trial court noted that respondent mother was not taking the situation as seriously as the children's conduct warranted, and ordered respondents' minor son to be placed in the home of respondent father, with visitation for respondent mother, to prevent further unsupervised contact between the children.

On October 27, 2009, petitioner filed an amended petition that added an allegation that respondent father failed to take appropriate action to safeguard the children after he was made aware of inappropriate sexual behavior between them. At a hearing that same day, respondent father tendered a plea, by telephone, to the added allegation. As [*6] support for the plea, respondent father admitted that he was made aware by petitioner of inappropriate sexual behavior between the children, but took no action to safeguard the children. After additional briefing and an additional hearing, the trial court concluded that respondent father's plea was sufficient to establish jurisdiction over the children.

On appeal, respondent mother challenges the court's assertion of personal jurisdiction over respondent father, the legal sufficiency of the petitions, certain procedural steps taken, or not taken, in the trial court, and the trial court's assertion of jurisdiction over the children on the basis of respondent father's plea to the allegations in the amended petition. [5] Respondent mother's issues on appeal largely present legal questions, which we review de novo. *In re LE, 278 Mich App 1, 17; 747 NW2d 883 (2008)*; *In*

re AMB, 248 Mich App 144, 165; 640 NW2d 262 (2001). Any factual findings made by the trial court are reviewed for clear error. *In re LE, 278 Mich App at 17*.

> 5 As a preliminary matter, we note that although respondent mother's brief on appeal lists 16 issues in its statement of questions involved, the body of her brief consists [*7] of only six enumerated argument sections. The statement of questions involved, which is required by *MCR 7.212(C)(5)*, generally governs the scope of the issues reviewed on appeal. *Williams v City of Cadillac, 148 Mich App 786, 790; 384 NW2d 792 (1985)*. To the extent that respondent mother's statement of questions involved raises matters that are not addressed in the body of her brief, we consider those matters to be abandoned. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald, 237 Mich App 186, 197; 602 NW2d 834 (1999)*; see also *Williams, 148 Mich App at 790*.

Addressing first, respondent mother's claim that the trial court did not have in personam jurisdiction over respondent father, we note that any challenge that respondent father may have had to the trial court's exercise of such jurisdiction over him was waived by respondent father's voluntary and continuous participation in the substance of these proceedings. [6] *In re Slis, 144 Mich App 678, 683; 375 NW2d 788 (1985)* ("A party who enters a general appearance and contests a cause of action on the merits submits to the jurisdiction [*8] of the court and waives service of process objections."). *MCL 600.701(3)* specifically provides that a Michigan court may exercise general personal jurisdiction over a party who consents thereto. A party's consent to the exercise of general personal jurisdiction under *MCL 600.701(3)* need not be express, but may be implied. *Unistrut Corp v Baldwin, 815 F Supp 1025, 1027 (ED Mich, 1993)*; see also *Burger King Corp v Rudzewicz, 471 U.S. 462, 472 n 14; 105 S Ct 2174; 85 L Ed 2d 528 (1985)*.

> 6 We express no opinion as to whether respondent father could have successfully challenged the trial court's personal jurisdiction over him, or whether respondent mother has standing to challenge that jurisdiction, because as noted above, respondent father plainly and affirmatively waived any challenge by his participation in the proceedings.

That said, however, essentially, respondent mother's argument is not really one of a lack of personal jurisdiction, but instead is directed at whether respondent father received proper notice of the proceedings. That is, respondent mother argues that respondents were to be served with a summons before the preliminary inquiry, that such summons were not served upon them [*9] and that service of a summons was not waived, and further, that respondent father received only a "letter" advising him of the proceedings, as would any interested party not a respondent, and that he was not advised at the May 7, 2009, preliminary inquiry that his appearance would waive any notice defects. Although defective notice may void an action in a child protective proceeding, notice is a personal right. *In re Terry, 240 Mich App 14, 21; 610 NW2d 563 (2000)*. Therefore, respondent mother lacks standing to argue that alleged notice deficiencies relating to respondent father deprived the trial court of personal jurisdiction over respondent father. *Id.*; see also, *In re EP, 234 Mich App 582, 598; 595 NW2d 167 (1999)* ("A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties."). We again note that respondent father does not allege that he did not receive appropriate notice or service of process in this action, that the record reflects that respondent father was personally served with a summons, that he received actual notice of various hearings, and that he was present continually throughout the [*10] proceedings.

We next consider respondent mother's arguments concerning the legal sufficiency of the original and amended petitions, which respondent mother argues affected the trial court's subject-matter jurisdiction. Jurisdiction is a court's power to act and authority to hear and determine a case. *In re AMB, 248 Mich App at 166*. In a child protective proceeding, a trial court's subject-matter jurisdiction is determined by whether "the action is of a class that the court is authorized to adjudicate" and the claim stated in the petition is "not clearly frivolous." *In re Hatcher, 443 Mich 426, 437; 505 NW2d 834 (1993)*. Accordingly, subject-matter jurisdiction exists where the allegations provide probable cause for the court to believe that there is statutory authority to act. *In re AMB, 248 Mich App at 168*. The trial court thereafter exercises jurisdiction over the children through the process of adjudication. *In re Brock,*

442 Mich 101, 108; 499 NW2d 752 (1993); In re AP, 283 Mich App 574, 593; 770 NW2d 403 (2009).

In this case, because the trial court did not exercise jurisdiction over the children based on the allegations pertaining to respondent mother, it is necessary to focus, first, [*11] on the allegations relating to respondent father.

Respondent mother has failed to show any impediment to the trial court's decision to exercise jurisdiction over the children. We need not consider whether the original petition was facially deficient because the trial court exercised jurisdiction pursuant to respondent father's plea to an amended petition. [7] *MCL 712A.11(6)* provides that a petition "may be amended at any stage of the proceedings as the ends of justice require." [8] See also *In re Slis, 144 Mich App at 684.* The record indicates that the amended petition differed from the original petition only to the extent that it added an allegation that respondent father failed to take appropriate action to safeguard the children after he was made aware of inappropriate activity between them. There was no change to the allegation in the original petition that respondent father had not been involved in the children's lives, to the content of the "request form" that accompanied the original petition, or to the allegations concerning respondent mother.

> 7 We do note, however, that both respondent mother and respondent father waived a probable cause determination as to that initial petition.
>
> 8 Although [*12] Issue IX of respondent mother's statement of questions involved questions the validity of the amended petition without the consent of all parties, she does not address this issue in the body of her brief. Therefore, it has been abandoned. *Prince, 237 Mich App at 197.*

The deficiencies alleged by respondent mother for failure to comply with various requirements in *MCR 3.961(B)* and *MCR 5.113* either lack merit or involve technical matters that may be considered harmless. *MCR 3.902(A); MCR 2.613(A).* Contrary to respondent mother's argument on appeal, the filed copy of the "request form" contains a petition number and court name. *MCR 5.113(A)(1)(b)(i)* and *(ii).* Any deficiency in the case number suffix was harmless. Similarly, while the petition does not refer to the continuing jurisdiction of the Ottawa Circuit Court in the divorce action as required by *MCR 3.961(B)(2)(d),* this deficiency was also harmless, inasmuch as the record indicates that the Ottawa Circuit Court was given notice of the child protective proceeding at the time of the preliminary inquiry [9] on the original petition. And while there is no statement directly identifying the petitioner, respondents, or the children's domicile, [*13] this information could be deduced readily from the allegations in the petition as a whole. *In re AMB, 248 Mich App at 174.*

> 9 Although a referee conducted the preliminary inquiry, we note that the trial court later entered an order authorizing the petition, consistent with *MCR 3.913* and *MCL 712A.10(1)(c).*

The material issue raised by respondent mother is whether the amended petition contains the "essential facts that constitute an offense against the child under the Juvenile Code" and "citation to the section of the Juvenile Code relied on for jurisdiction." *MCR 3.961(B)(3)* and *(4).* Considering the citation in the petition to *MCL 712A.2(b),* which was accompanied by language paralleling that contained in subsections (1) and (2) of that statute, together with the allegation referring to respondent father's lack of involvement with the children and the added allegation regarding respondent father's failure to safeguard respondents' minor son and minor daughter, we find no deficiency in the amended petition that would preclude the trial court from taking action based on respondent father's plea. The fact that there was no specific reference in the added allegation to respondents' other two [*14] children did not preclude the trial court from taking jurisdiction over all of the children. Under the doctrine of anticipatory neglect, a "child may come within the jurisdiction of the court solely on the basis of the parent's treatment of another child." *In re Gazella, 264 Mich App 668, 680-681; 692 NW2d 708 (2005).*

Further, we are not persuaded that respondent father's status as a noncustodial parent precluded the trial court from taking action based on the allegations pertaining to him. Natural parents, not simply custodial parents, have fundamental liberty interests in the care, custody, and management of their children. See *In re Rood, 483 Mich 73, 120-121; 763 NW2d 587 (2009)* (CORRIGAN, J.). "Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life." *Santosky v Kramer, 455 U.S. 745, 753; 102 S Ct 1388; 71 L Ed 2d*

599 (1982). Indeed, if the Department of Human Services determines that there is an open friend of the court case, *MCL 722.628(21)*, it is required to "provide noncustodial parents of a child who is suspected of being abused or neglected with the form developed by the department that has [*15] information on how to change a custody or parenting time court order." See also *In re AP, 283 Mich App 574, 593 n 15; 770 NW2d 403 (2009)*.

The allegations in the amended petition, accepted as true, are sufficient to establish that respondent father was a "parent . . . who is alleged to have committed an offense against a child." *MCR 3.903(C)(10)*. Thus, respondent mother has not established any deficiency in the amended petition that precluded the trial court from exercising jurisdiction over the children on the basis of respondent father's plea.

Further, the record does not support respondent mother's contention that the trial court exercised jurisdiction based only on respondent father's consent. Instead, the record reflects that respondent father entered a plea of admission to the allegation against him. Under *MCR 3.971(A)* a "court has discretion to allow a respondent to enter a plea of admission . . . to an amended petition." The rule requires the trial court to advise a respondent of various rights, *MCR 3.971(B)*, and to determine that the plea was knowingly, understandingly, and accurately made, *MCR 3.971(C)*. An accurate plea of admission is determined by "establishing support for [*16] a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest." *MCR 3.971(C)(2)*.

A mere inquiry of a parent regarding whether an allegation in a petition is true is inadequate. *In re SLH, AJH, & VAH, 277 Mich App 662, 673; 747 NW2d 547 (2008)*; *In re CR, 250 Mich App at 202*. In this case, however, the record reflects that the trial court and attorneys for both respondent father and respondent mother were permitted to question respondent father regarding the factual basis of his plea. The trial court also took notice of the delinquency case involving respondents' minor son arising from the conduct underlying this action. In accepting respondent father's plea, and in finding support for the pleaded statutory grounds in *MCL 712A.2(b)(1)* and *(2)*, the trial court considered respondent father's admission regarding his lack of involvement with the children, as demonstrated by his failure to comply with his legal obligation to provide child support, as well as the risks posed by the activities of respondents' minor son and minor daughter to their mental well-being and respondent father's [*17] failure to take action to minimize these risks.

A trial court may exercise jurisdiction of children solely on the basis of one parent's plea. *In re LE, 278 Mich App at 17*. Because respondent mother has not shown any deficiency in the factual basis of respondent father's plea for purposes of establishing jurisdiction pursuant to *MCL 712A.2(b)(1)* and *(2)*, we uphold the trial court's adjudicative decision to exercise jurisdiction over the children.

Finally, we find it unnecessary to consider respondent mother's challenge to the September 10, 2009, order authorizing the removal of respondents' minor son from respondent mother's home. This Court previously dismissed respondent mother's appeal from that order as moot, because the order was superseded by the trial court's December 3, 2009, dispositional order, which is the subject of this appeal. *In re Bratcher*, unpublished order of the Court of Appeals, entered February 1, 2010 (Docket No. 294414). Under the law of the case doctrine, we decline to revisit that decision. *Webb v Smith (After Second Remand), 224 Mich App 203, 209; 568 NW2d 378 (1997)*. [10]

> 10 Although no change was made to the children's placement, we disagree with respondent mother's [*18] claim that the dispositional order incorporated the prior order. The purpose of a dispositional hearing is to "determine what measures the court will take with respect to a child properly within its jurisdiction." *MCR 3.973(A)*. This action is taken on behalf of a child after the court determines at the adjudicative stage that there is a statutory basis for exercising jurisdiction over the child. *In re Brock, 442 Mich at 108*.

We affirm.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ William C. Whitbeck